

# **CITY OF NOGALES**



# **PERSONNEL MANUAL**

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## CHAPTER 1

### AUTHORITY, INTENT & APPLICABILITY

#### 1.01 Authority

This City of Nogales Personnel Manual (“Rules”) is promulgated under the authority of §10 of the City of Nogales Charter and is subject to review and amendment by the City of Nogales (“City”).

#### 1.02 Intent (Amendment as per Order No. 2020-05-026 on 05/06/2020)

- A. These Rules are intended to establish a system of personnel administration to provide guidance and direction to City personnel while at work, and as a means to recruit and maintain an effective and responsive work force. These Rules are intended for the protection of City of Nogales employees.
- B. These Rules, as well as other departmental policies are not intended to create, guarantee, promise, or imply any fixed term or continuation of employment, nor guarantee, promise or imply the continuation of any benefit or privilege.
- C. No oral or written statement made by any City manager, department director, elected official, supervisor or employee that conflicts with any procedure or right in these Rules shall be binding upon the City.
- D. The City Council reserves the right to modify or delete any term, condition, benefit or privilege contained in these rules as the City Council in the exercise of its sole discretion deems to be in the best interest of the City.
- E. Administrative authority delegated by the City Council to the City Manager or other staff pursuant to these rules is subject to discretionary review by the City Council. Such review may be placed on the agenda as discussion and possible direction to staff.

#### 1.03 Applicability

- A. These Rules shall apply to all full-time employees except as excluded in § 1.04.
- B. Full-time employees are defined as employees who are employed to work a minimum of forty (40) hours weekly.

#### 1.04 Exclusions

- A. These Rules do not apply to the following positions and persons:
  - 1. Elected Officials
  - 2. City Manager
  - 3. City Attorney
  - 4. City Magistrate
  - 5. City Clerk
- B. The terms and conditions of employment for the listed positions in numbers 2 through 5 above shall be as established by the City Council pursuant to a separate written contract.
- C. These Rules do not apply to the following positions and persons:
  - 1. Mayor’s executive assistant.

- D. The terms and conditions of employment for the listed positions in C above shall be as established, in writing, by the Mayor.
- E. These Rules do not apply to:
  - 1. Temporary employees.
  - 2. Volunteer personnel.
  - 3. Personnel who render temporary, provisional or special assignment services.
  - 4. Part-time employees – defined as employees who are employed on less than on a full-time basis.
  - 5. Persons who are paid a stipend in lieu of wages to defray expenses during their period of training.
  - 6. Contract personnel or employees.
  - 7. Employees whose salaries are funded by Federal or other grants.
- F. The terms and conditions of employment for the listed positions in paragraph E above shall be as established, in writing, by the City.
- G. Notwithstanding any employment term, benefit or condition established, it is expressly understood that the positions and employees set forth in 1.04(A), (C) and (E) above are at will; and their employment may be terminated at any time by the City for any or no reason, with or without cause.

#### **1.05 Acceptance of Coverage**

The acceptance of employment to any position covered by these Rules shall signify acceptance of the coverage of these Rules by an employee.

#### **1.06 Administration / Interpretation of Rules**

- A. The City Attorney shall be responsible for the interpretation and construction of these Rules.
- B. The Human Resources Director shall be responsible for the application of these Rules.
- C. Interpretation, construction, and application of these Rules shall in all instances be uniform and consistent.
- D. Where the meaning of these Rules is not clear, they shall be liberally construed in a sensible, reasonable, and consistent manner in favor of the promotion and protection of an employee's rights and privileges enumerated in these Rules.

#### **1.07 Human Resources Director**

- A. In addition to any duties imposed elsewhere, the Human Resources Director shall:
  - 1. Serve as the administrator of the Grievance Board and of the Appeals Commission.
  - 2. Maintain all records of the Grievance Board and of the Appeals Commission.
  - 3. Establish and maintain a roster of all employees of the City in which there shall be set forth as to each employee the position title, current job description, pay, and other pertinent information required by state and federal law.

4. Formulate and prescribe procedures and forms consistent with these Rules and make them available as appropriate.
5. Recommend and work with department directors to maintain such programs as are deemed necessary to promote employee training, safety, morale and productivity.
6. Act in a manner consistent with the intent and principles embodied in these Rules in handling events not specifically covered by these Rules.
7. In consultation with the City Attorney, prepare and submit for consideration to the City Council proposed changes to these Rules.
8. Perform any other lawful act considered necessary or desirable to carry out the purposes or provisions of these Rules.

#### **1.08 Department Responsibility**

- A. Department directors are responsible for the application of these Rules within their departments, and shall ensure that all employees within their departments comply with these Rules.
  1. All department directors shall keep a current copy of these Rules readily available for employees to review and use.
- B. Department directors shall ensure that the following functions are performed in their departments:
  1. The preparation of reports relating to payroll, leave, and compensation.
  2. The preparation of written departmental rules and policies relating to procedures, lines of communication, authority to act in personnel matters, work unit regulations and other personnel policy matters necessary and not in conflict with these Rules and other City policies.
  3. The preparation of personnel reports and other information as required by the Human Resources Director.

#### **1.09 Departmental Rules and Policies; Replacement of Prior Rules**

- A. These Rules shall supersede all previously adopted policies, rules, regulations and procedures.
  1. All departmental rules, policies, and procedures previously adopted shall remain in effect except those that are in conflict with these Rules.
  2. Departmental rules, policies, and procedures shall be modified to comply with these Rules.
  3. All departmental policies, rules and procedures shall be in writing and approved by the City Manager, Human Resources Director, and the City Attorney.

#### **1.10 Severability**

If any provision of these Rules, or the application thereof to any person or circumstance, is held invalid, the remainder of the Rules, or the application of such provision to other persons or circumstances, shall not be affected thereby.

## CHAPTER 2

### EQUAL EMPLOYMENT OPPORTUNITY / PRODUCTIVE WORK ENVIRONMENT

#### 2.01 Equal Employment Opportunity Policy

- A. It is the policy of the City to provide equal employment opportunities to all employees and applicants for employment without regard to race, color, national origin, ancestry, age, religion, disability status, sex, gender, gender identity, sexual orientation, marital or familial status, status as a military veteran, or status in any group protected by local, state, or federal law.
- B. City employment shall be based on qualifications and shall be free of improper personal or political considerations.

#### 2.02 Productive Work Environment

- A. It is the policy of the City to provide its employees with a safe and pleasant working environment which encourages efficient, productive, and creative work.
  - 1. Employees shall always be treated in a dignified and respectful manner.

## CHAPTER 3

### RECRUITMENT, EMPLOYMENT, EMPLOYMENT OF RELATIVES AND OUTSIDE EMPLOYMENT

#### 3.01 Recruitment (Amendment as per Order No. 2020-05-026 on 05/06/2020)

A. Recruitment procedure for all part-time or full-time positions shall be as follows:

1. The department director shall initiate a request to fill a position in the department by submitting, in writing, to the City Manager and to the Human Resources Director, the job title, salary, qualifications, and date of commencement of employment of the position to be filled.
2. If approved by the City Manager, the Human Resources Director shall first announce the availability of the position to current City part-time and full-time employees interested in transferring in accordance with §5.03.
3. If no interested or satisfactory candidate is found from existing City full-time or part-time employees, the Human Resources Director shall set recruitment dates and advertise the position.

B. The recruitment and hiring of department heads shall be as follows:

1. The Human Resources Director in consultation with the City Manager shall review the subject job description, minimum and preferred qualifications, undertake revisions as necessary in accordance with these Rules, and develop a recruitment strategy, including where to advertise notice of the opening and any additional actions necessary to inform qualified persons of the employment opportunity with the City.
2. The Human Resources Director in consultation with the City Manager shall develop interview questions, a scoring matrix and appoint an ad-hoc interviewing committee to interview and score finalists to assist the City Manager in selecting the most qualified finalist for the position.
3. As soon as practicable after the date set for first review of applications, the City Manager shall review all applications and résumés to select the finalists for interviews.
4. The Human Resources Director shall set up interviews with the finalists and forward their applications and résumés to the Mayor and City Council for informational purposes.
5. After the finalists have been interviewed and scored by the interviewing committee, the City Manager may conduct such further interviews and reference checks from among the finalists as he deems appropriate to select the most qualified candidate likely to succeed in the performance of the duties of the position, and shall thereafter extend an offer of employment to his preferred candidate.

If the preferred candidate declines the offer, the City Manager may extend an offer of employment to his next preferred candidate from among the finalists, or alternatively he may reject the remaining finalists and restart the recruitment process.

#### 3.02 Prospective Employees

A. Prospective employees shall:

1. Be 18 years of age or older.
2. Must meet all required job qualifications.
3. Submit fingerprints for the purpose of obtaining a criminal history check.

4. Be able to adequately physically perform the essential functions of the job.
  - a. Reasonable accommodations will be made by the City in conformance with all federal and state requirements.
5. Truthfully and completely provide all of the information requested in the City job application.
6. Submit to pre-employment drug testing (§14.03).

### **3.03 Disqualification from Employment**

- A. The following shall disqualify prospective employees from City employment:
  1. False and/or incomplete job application.
  2. Failure to pass pre-employment drug test (§14.03).
  3. Pending charge or indictment of a felony crime.
  4. Violation of §3.06.
  5. Conviction of a crime involving felony homicide, felony assault, felony kidnapping, felony sexual offense, felony robbery, or felony drug trafficking within ten (10) years of application.
  6. Conviction of a crime involving any other felony offense within five (5) years of application.
  7. Use or attempted use of any political pressure, threats, or bribery to secure an advantage in the application or examination process.
  8. Dismissal, for cause, from City employment within five (5) years of application.
  9. Resignation from City employment in lieu of dismissal within five (5) years of application.

### **3.04 Temporary & Part-time Employment**

- A. The hiring of temporary and part-time employees is subject to the prior approval of the City Manager.
  1. The recruitment process for temporary employees shall be as established, in writing, by the City Manager.
  2. The terms and conditions of employment for a temporary or part-time employee shall be as established, in writing, by the City Manager.
- B. Temporary employees shall not be employed for more than six (6) months except under extenuating circumstances and written approval of the City Manager.
- C. Temporary or part-time employees may be subsequently hired for other positions only after all applicable procedures for hiring as set forth in these Rules have been followed.

### **3.05 Grant Employees**

- A. Hiring for positions funded by grants is subject to the prior approval of the City Manager.
  1. The appointment to grant funded positions shall follow all applicable procedures for hiring as set forth in these Rules.



2. The terms and conditions of employment for a grant employee shall be as established, in writing by the City Manager.
- B. Grant employees may subsequently be hired for other positions only after all applicable procedures for hiring as set forth in these Rules have been followed.

### **3.06 Employment of Relatives**

- A. No person shall be employed in a position where:
1. The decision to hire or appoint is made by a relative, or
  2. Any aspect of the employee's work is directly **or indirectly** supervised by a relative, or
  3. Any decision regarding the employee's compensation is directly or indirectly made by a relative, or
  4. Approval of the employee's work is directly or indirectly made by a relative.
- B. Spouses or legal domestic partners shall not be employed in the same department.
- C. No more than two (2) relatives may be employed by City at the same time.
- D. If the marriage of City employees with each other results in a violation of sections B or C, the marrying employee with the least seniority shall be dismissed.
- E. If the hiring of an employee, or the promotion of an employee within a department, results in a violation of section A above, supervision, approvals, or decisions involving or concerning the hired or promoted employee shall become the direct responsibility of the department director.
1. Specific written directives and procedures shall be established by the department director regarding supervision and decisions concerning the employee.
- F. Relatives shall be defined as:
1. Spouse or legal domestic partner
  2. Parent
  3. Child
  4. Sibling
  5. Uncles or Aunts
  6. Grandparents
- G. Notwithstanding the above, the City Manager in his sole discretion, may approve a deviation of the above policy (except section B) if specific articulable extenuating factors are present, including but not limited to the following:
1. The position sought to be filled is essential to the operation of the City.
  2. The position has remained vacant after utilization of usual and extra recruiting efforts.
  3. Any other factor which has or may have a bearing on essential operations of the City.
  4. Specific conditions and procedures are established in writing to minimize and safeguard the requirements of section A above.

5. The specific and extenuating factors justifying a policy deviation are set forth in writing, and approved by the City Attorney and the Human Resources director.
- H. The provisions in these Rules relating to grievances (Chapter 25) and appeals (Chapter 27) shall not apply to City Managers decisions made pursuant to section G above.

### **3.07 Outside Employment**

- A. Employees are allowed to hold employment outside and in addition to their City employment subject to the conditions set forth in paragraphs B and C below.
- B. Employment outside City employment shall not:
  1. Interfere or conflict with the efficient performance of an employee's City duties.
  2. Create or involve a conflict of interest.
  3. Occur during the employee's regular or assigned working hours unless the employee is either on vacation, leave without pay, or other approved leave.
- C. Employees shall provide written notice of outside employment to their Department Director with a copy to the Human Resources Department.
  1. Said notice shall specify the name and address of the outside employer.
  2. Nature of duties and responsibilities performed for outside employer.
- D. Outside employment by Department Heads shall not be allowed without the specific written authorization of the City Manager.

## CHAPTER 4

### EXAMINATIONS, HIRING & PROMOTIONS

#### 4.01 Nature and Development of Examinations

- A. Examinations shall measure knowledge and skills required for the position sought.
  - 1. The Human Resources Director may use such forms and methods in the examination process as may be appropriate.
- B. Examinations may be designed for a particular position or for an entire class of positions.
- C. The type or nature of the examinations to be used in the hiring or promotion process, shall be established by the Human Resources Director in conjunction with department directors.
- D. If an oral board examination is used as part of the examination process, the oral board examination shall be conducted by a panel of two (2) or more qualified individuals selected by the Human Resources Director in conjunction with the department director.

#### 4.02 Administration of Examinations

- A. The Human Resources Director, in conjunction with department directors, shall establish such time limits, methods of recording answers, regulations for admittance to examinations, policies on retesting and such other administrative procedures as determined appropriate for each examination.
- B. The Human Resources Director, in conjunction with department directors, shall take such measures as are necessary to ensure that uniform standards are maintained regarding instructions, procedures, and other test conditions to afford fair, legal, and equal treatment of all applicants.
- C. Examinations may be administered at such times and in such places as are necessary and practical.
  - 1. In appropriate circumstances the Human Resources Director may administer special examinations to individuals, provided that in no case shall the Human Resources Director be required to do so.
- D. The Human Resources Director may designate such qualified persons to administer examinations and serve as examiners and test monitors as may be needed.

#### 4.03 Scoring of Examinations

All examinations and other selection criteria shall be impartially and objectively scored.

#### 4.04 Passing Scores

- A. The Human Resources Director, in conjunction with the City Manager and department directors, shall determine the passing scores to be used in the examination and selection process.
- B. Scores may be based on a single or multiple segment examination process.
  - 1. Examinations utilizing multiple segments may have differing passing scores established for each segment of the examination.
- C. Final passing scores shall not be less than a total cumulative score of 70%.

#### **4.05 Hiring and Promotional Lists**

- A. Hiring and promotional lists shall be established by the Human Resources Director based upon the scoring of examinations given which shall rank each applicant in descending numerical order with the applicant receiving the highest score as #1.
- B. The duration of each hiring or promotional list shall begin with the date of the list, and each list shall expire one (1) year thereafter unless such duration, is reduced, is canceled, or extended by the Human Resources Director.
- C. When the duration of a list is reduced or a list is canceled, all persons whose names appear thereon shall be notified and given an opportunity to compete in any subsequent process to establish new hiring or promotional lists.

#### **4.06 Hiring and Promotion Selection**

- A. Hiring and promotion selection decisions shall be made by department directors within their respective departments subject to the final approval of the City Manager.
- B. Hiring and promotion selections by department directors shall be made from the hiring and promotions lists established pursuant to §4.05 above.

## CHAPTER 5

### PROBATION, TRANSFERS, PROMOTIONS & ASSIGNMENTS

#### 5.01 Probation

- A. All new hires, transfers, and promotions of employees shall be made subject to a probationary period.
  - 1. The probationary period shall be regarded as an integral part of the examination and selection process, and shall be utilized for closely observing an employee's work performance.

#### 5.02 Probationary Period for New Employees

- A. The initial probationary period for new employees shall be the first one-hundred eighty days (180) calendar days following an employee's date of hire.
  - 1. The initial probationary period for Firefighters and Certified Police Officers shall be a period of three-hundred sixty-five (365) calendar days (excluding department directors).
  - 2. Time served in temporary or part-time positions shall not be counted towards the probationary period.
- B. The initial probationary period for new employees may be extended for one (1) additional term not to exceed ninety (90) calendar days if the department director determines it necessary and in the best interest of the department to do so, and with the written concurrence of the Human Resources Director. Extensions of probationary period shall be in writing.
- C. Probationary employees serve at will and their employment may be terminated at any time by the City for any or no reason, with or without cause.
- D. The provisions contained in these Rules relating to grievances (Chapter 25) and appeals (Chapter 27) shall not apply to new probationary employees.

#### 5.03 Transfers and Promotions

- A. Full-time employees may apply for a transfer pursuant to §3.01(A), or a promotion provided the employee has:
  - 1. Completed an initial probationary period pursuant to §5.02 above.
  - 2. Completed at least one (1) year of service in the employee's current position and,
- B. Non-public safety employees transferring to or promoted to another non-public safety position shall be required to commence and complete a ninety (90) calendar day probationary period.
- C. Non-public safety employees transferring to a public safety position shall be required to commence and complete a three hundred sixty-five (365) calendar day probationary period as set forth in, and subject to the conditions of, §5.02(C) and (D) above.
- D. Public safety employees promoted to another public safety position shall be required to complete a ninety (90) calendar day probationary period.
- E. Probationary periods may be extended for one (1) additional term not to exceed ninety (90) calendar days if the department director determines it necessary and is in the best interest of the department to do so, and with the written concurrence of the Human Resources Director.

- F. Employees transferring to or promoted to another position, other than employees transferring to public safety positions from non-public safety positions (§5.03(C)), who do not successfully complete their probationary periods shall be reinstated to their former position or to an equivalent position with equivalent pay, benefits and working conditions, requiring the same or substantially equivalent skill, effort, responsibility, and authority.
- G. The provisions contained in these Rules relating to grievances (Chapter 25) and appeals (Chapter 27) shall not apply to probationary employees.

#### **5.04 Completion of Probationary Period**

- A. New employees upon completion of their initial probationary period, and any applicable extended term, shall attain status as full-time non-probationary City employees.
- B. Employee transferring to or promoted to another position upon completion of their probationary period, and any applicable extension term, shall attain status as full-time non-probationary City employees.
- C. The department director shall, in writing, notify the Human Resources Director of the employee's completion of probation.

#### **5.05 Temporary Assignment**

- A. The City Manager, or a department director with the written approval of the City Manager, may temporarily assign an employee to other than the employee's regular position if required by the needs of the City.
  - 1. Temporary assignments shall not exceed ninety (90) calendar days in any twelve (12) month period.
  - 2. Subject to the written approval of the City Manager, and if necessary due to extenuating circumstances, a temporary assignment may be extended an additional period not to exceed ninety (90) calendar days.
- B. If the temporary assignment is to a position with a lower salary range than that of the employee, the salary of the employee shall not be reduced during the period of temporary assignment.
- C. If the temporary assignment is to a position with a higher salary range, and
  - 1. The assignment is longer than thirty (30) working days, and
  - 2. The employee meets all of the qualifications of the position to which the employee is assigned, then the employee's salary shall be increased to the minimum of the salary range of the assigned position or five percent (5%) above the employee's current salary, whichever is greater.
  - 3. The increase shall coincide with the entire period of the temporary assignment.
- D. If the temporary assignment is to a position with a higher salary range, and
  - 1. The assignment is longer than thirty (30) working days, and
  - 2. The employee does **not** meet all of its qualifications of the position to which the employee is assigned, then the employee's current salary shall be increased in an amount not to exceed the minimum salary range of the assigned position, or five (5%) above the employee's current salary, whichever is greater.
  - 3. The increase in salary of the assigned employee shall be determined by the department director and City Manager taking into consideration the employee's education, experience, and the duties of the assigned position which are assumed by the employee.
  - 4. The increase in salary shall coincide with the entire period of the temporary assignment.

## CHAPTER 6

### EMPLOYEE PERFORMANCE EVALUATIONS

#### 6.01 Objectives

- A. Employee evaluations are intended to:
  - 1. Measure and maintain the quality of employee work performance;
  - 2. Serve as a basis for promotions;
  - 3. Serve as a basis for pay increases;
  - 4. Serve as an indication of training needs;
  - 5. Serve to improve supervisory quality;
  - 6. Serve as feedback to supervisors;
  - 7. Serve as validation of recruitment/testing procedures; and
  - 8. Serve as a basis for job description updates.

#### 6.02 Evaluations

- A. The performance evaluation process and forms to be used shall be as established by the Human Resources Director in conjunction with department directors.
- B. Performance evaluations shall be conducted by department directors or designees in accordance with adopted written City job descriptions and organizational charts.

#### 6.03 Evaluations Schedules

- A. New employees, transferring and promoted employees shall be evaluated at the end of each three (3) months of their probationary periods and applicable extension terms.
- B. Full-time and part-time employees shall be evaluated no less than one (1) time a year.

#### 6.04 Evaluation Records

- A. Copies of all performance evaluations shall be distributed as follows:
  - 1. Original to the Human Resources Director for the employees' official personnel file
  - 2. One copy to the employee
  - 3. One copy to the department director

## CHAPTER 7

### PERSONNEL RECORDS & EMPLOYMENT VERIFICATION

#### 7.01 Personnel Records

- A. The Human Resources Director shall be the custodian of all official employment records.
  - 1. Department directors shall forward to the Human Resources Director any documents pertaining to employment, an employee's performance, or any other matter involving an employee.
- B. Personnel files shall **not** be disclosed except as required by law.
  - 1. The following persons shall be allowed access to official personnel files:
    - a. City Attorney or designee
    - b. City Manager or designee
    - c. The employee or employee's designee with written authorization from the employee
    - d. Human Resources Director or designee
    - e. Law enforcement and investigative staff in the course of their duties and only with proper identification and a release signed by the employee, or a subpoena or other court order requiring the release of personnel records.
    - f. Internal, state and federal auditors in the course of their duties
    - g. The employee's department director or designee
    - h. Attorneys representing the City in the course of their official duties
- C. Individual departments shall **not** maintain separate personnel files.
  - 1. Any additional files or records maintained by departments are unofficial in nature and shall be restricted to matters of training, informal correspondence, temporary materials and other such departmental material.

#### 7.02 Employment Verification Policy

- A. All inquiries regarding any current City employee, former City employee, or applicant for City employment must be referred to the Human Resources Director for response.
  - 1. No information regarding any current City employee, former City employee, or applicant for City employment shall be released by any other department or employee.
- B. For purposes of employment verification, no information shall be released without a name and social security number and only pursuant to written authorization signed by employee.
  - 1. The following information may be released:
    - a. Dates of employment.
    - b. Positions held and effective dates.



- c. Whether position is or was full-time, part-time, temporary, or other.
  - d. Salary information.
  - e. Information pertaining to driving records, drug or alcohol testing of employees who are required to have Commercial Drivers Licenses will be released in accordance with applicable federal and state legal requirements.
2. The following information shall **not** be released:
- a. **Information pertaining to the “quality” of an employee or the “quality” of the employee’s work performance.**
  - b. **Whether the employee was “dismissed” or “terminated”, or any other reason for leaving.**

## CHAPTER 8

### CONFLICT OF INTEREST, PERSONAL GAIN / IMPARTIALITY, & GIFTS

#### 8.01 Conflict of Interest

- A. It is the policy of the City that all employees be free from any interest, influence or relationship that might conflict, or appear to conflict, with the best interests of the City.
- B. The existence of an actual or potential conflict of interest shall be immediately disclosed.
- C. Conflict of interest laws (A.R.S. §38-501 et. seq.) must be scrupulously observed.
- D. Employees shall guard against any relationship that creates a conflict of interest or an appearance of a conflict of interest.

#### 8.02 Personal gain; Impartiality

- A. Employees shall not use their positions for personal gain.
- B. Employees must always reflect impartiality.
  - 1. All decisions must be determined by impersonal consideration, free from any taint of partiality or preferential treatment.
- C. Employees must never permit themselves to be placed in any situation which could lead to an appearance of preferential treatment, partiality or personal gain.

#### 8.03 Gifts and Gratuities

- A. Employees shall not accept gifts, gratuities or loans from organizations, businesses or individuals with whom an official relationship exists, or may exist, with the employee or City.
  - 1. This section does not prohibit the acceptance by an employee of food or refreshment of insignificant value on infrequent occasions where the employee is properly in attendance, nor the solicitation or acceptance by an employee of loans from banks or other financial institutions on customary terms to finance proper and usual activities of the employee, or the acceptance of unsolicited advertising or promotional material such as pens, pencils, calendars and other items of nominal intrinsic value.

## CHAPTER 9

### DRESS CODE, TELEPHONE AND COMPUTER USAGE & SMOKING

#### 9.01 Dress Code

- A. The establishment of departmental dress code guidelines shall be at the discretion of the department directors, subject to the written approval of the City Manager, consistent with acceptable standards for the work being performed, the nature of public contact, and safety considerations.
  - 1. Common sense and good taste shall be the guiding factors in the establishment of dress code guidelines.

#### 9.02 Telephone/Computer/E-mail Usage

- A. Personal telephone calls, computer use, cellular telephone use, or e-mails during the workday shall not interfere with the employee's work and duties.
  - 1. All personal calls, computer use, cellular telephone use, or e-mails during work time are to be limited to those which are absolutely necessary and are to be as brief as possible.
    - a. Any other personal calls, computer use, cellular telephone use, or e-mails are to be made during non-work time.

#### 9.03 Smoke-Free Workplace

- A. All City premises and vehicles are tobacco and smoke-free.

## CHAPTER 10

### POLITICS & POLITICAL ACTIVITY

#### 10.01 Prohibited Political Activities

- A. Employees shall not:
1. Use their official authority or influence to interfere with or affect the outcome of any election.
  2. Directly or indirectly coerce any other employee to support or contribute anything of value to a political party, committee, candidate, or organization.
  3. Offer themselves for nomination or election for any local, state, or federal elected office, except as otherwise permitted in §10.02.
  4. Hold any local, state, or federal elected office, except as otherwise permitted in §10.02.
  5. Express opinions on political subjects or candidates or on City premises (except bumper stickers)
  6. Engage in political activity of any kind, partisan or nonpartisan during work hours or on City premises.
- B. “Offer themselves for nomination or election” means the filing of a nomination paper.

#### 10.02 Permissible Political Activities on Non-City premises during Non-Work Hours

- A. City employees shall retain the right to:
1. Register and vote in any election.
  2. Express their opinions on political subjects and candidates as individuals, both privately and publicly.
  3. Display a political picture, sticker, badge or button.
  4. Participate in activities of a civic, community, social or professional organization.
  5. Run for and hold partisan political party office;
    - a. Be a member of a political party as an officer or delegate, or other political organization and participate in its activities to the extent consistent with law.
  6. Attend a political party convention, fund raising function, caucus or similar gathering of a political party in support of or in opposition to a partisan candidate for public office or political party office.
  7. Sign or circulate a political petition as an individual.
  8. Contribute to or solicit donations for a political candidate, campaign, party or organization.
  9. Run for and serve as a member of a school board or a college district governing board.
  10. Serve as an election judge or clerk, or similar position, to perform non-partisan duties as prescribed by state or local law.

11. Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise the neutrality, efficiency or integrity of their position, or create a conflict or an apparent conflict of interest.

### **10.03 Coerced Political Activity**

No employee may be required by any City elected official, City manager, department director or any other employee, as a condition of employment, promotion or otherwise, to participate, or not participate, in any election campaign for any public office or in any partisan political activity whatsoever.

## CHAPTER 11

### DISCRIMINATION & HARASSMENT (Amendment as per Order No. 2020-12-069 on 12/2/2020)

#### 11.01 Policy Statement

- A. The City strives to create and maintain a work environment where people are treated with dignity, decency and respect.
  - 1. The workplace should be characterized by mutual trust and the absence of intimidation in any form.
  - 2. Employees should be able to work and learn in a safe and stimulating environment.
- B. Unlawful discrimination or harassment of any kind is prohibited and will not be tolerated.

#### 11.02 Employee Rights and Responsibilities

- A. All employees share the responsibility of understanding and preventing unlawful discrimination and harassment.
- B. Every employee in a supervisory position who becomes aware of any action or conduct that may constitute a violation of this policy shall take immediate and appropriate action, including immediately informing his or her department director and documenting all relevant details.
- C. Recipients of harassment shall not remain silent.
  - 1. Recipients shall make it clear that such conduct is offensive and unwelcome and state clearly that the offensive conduct is to stop at once.
  - 2. If the conduct does not stop, the conduct shall be reported to the Human Resources Director.
  - 3. Any employee who believes he or she may be the recipient of unlawful discrimination or harassment may file a complaint with Human Resources Department pursuant to §11.04 below.
  - 4. A complaint alleging harassment or discrimination filed in good faith shall not be the basis for any discipline or retaliation in accordance with Chapter 13, Whistle Blower protections.

#### 11.03 Prohibited Conduct Under This Policy

- A. Discrimination - definition
  - 1. It is a violation of this policy to discriminate in providing employment opportunities, benefits or privileges, to create discriminatory work conditions, or to use discriminatory evaluative standards in employment if the basis of that discriminatory treatment is, in whole or in part, the person's race, color, national origin, ancestry, age, religion, disability status, sex, gender, gender identity, sexual orientation, marital or familial status, status as a military veteran, or status in any group protected by local, state, or federal law.
- B. Harassment - definition
  - 1. Harassment is verbal or physical conduct designed to threaten, intimidate, or coerce, including verbal taunting (racial, ethnic, or other slurs) that impairs an employee's ability to perform the duties of the job.
  - 2. Examples (non-exclusive) of conduct that may constitute harassment are:

- a. Verbal: Comments regarding a person's race, color, national origin, ancestry, age, religion, disability status, gender, gender identity, sexual orientation, marital status, familial status, or personal appearance, including epithets, slurs, and negative stereotyping.
- b. Non-verbal: Distribution, display or discussion of any written or graphic material that ridicules, denigrates insults, belittles, or shows hostility or aversion toward an individual, or group because of race, color, national origin, ancestry, age, religion, disability status, sex, gender, gender identity, sexual orientation, marital or familial status.

C. Sexual Harassment - definition

1. Sexual harassment is defined as unwelcome, personally offensive, sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of such conduct is used as the basis for employment decisions or such conduct creates or can create an intimidating, hostile, or offensive working environment.
2. Examples (non-exclusive) of conduct that may constitute sexual harassment are:
  - a. Verbal: Sexual innuendoes, suggestive comments, joke(s) or "kidding" of a sexual nature, sexual propositions, lewd remarks, threats. Requests for any type of sexual favor, including repeated, unwelcome requests for dates.
  - b. Non-verbal: The distribution, display, or discussion of any written or graphic material, including calendars, posters, and cartoons that are sexually suggestive, or shows hostility toward an individual or group because of sex.
  - c. Physical: The unwelcome, unwanted physical contact, including but not limited to, touching, tickling, pinching, patting, brushing up against, hugging, cornering, kissing, or fondling.
3. Normal, courteous, mutually respectful, pleasant, non-coercive interactions between employees, which are acceptable to and welcomed by both parties, are not considered to be harassment, or sexual harassment.

#### 11.04 Complaint Procedure

A. The following complaint procedure shall be followed:

1. An employee shall initiate the complaint process with the Human Resources Director.
2. The Human Resources Director, or at the option of employee, another department director, will assist the employee in filing and signing a written complaint on forms prepared by the Human Resources Department.
3. If the complaint involves the Human Resources Director, the complaint shall be filed with the City Manager and a copy filed with the City Attorney.
4. If the complaint involves the City Manager, the complaint shall be filed with the Human Resources Director and a copy with the City Attorney.
5. Upon receipt of the complaint, the Human Resources Department, in consultation with the City Attorney, the relevant department director (unless the department director is alleged to have initiated or participated in the subject conduct) and the City Manager, will determine how and who will conduct the investigation regarding the complaint.
6. If the complaint involves the Human Resources Director, the City Manager in conjunction with the City Attorney will determine how and who will conduct the investigation regarding the complaint.

7. Within five (5) working days of the filing of the complaint, the investigation shall be commenced to determine whether a violation of this policy has occurred.
8. The investigation shall include, at minimum, interviews of the complainant, witnesses and any other person possessing relevant information, along with a review of relevant materials and documents.
9. Within twenty (20) working days after the filing of the complaint, the investigative report shall be completed and findings submitted to the department director, Human Resources Director, City Manager or City Attorney as may be appropriate.
10. If a determination is made that a violation of this policy has occurred, appropriate remedial and disciplinary action shall be taken.
11. If the results of the investigation prove to be inconclusive or not a violation of this policy, all appropriate preventative or other necessary action shall be taken and documented.
12. Not later than ten (10) days after the completion of the investigative report, the complainant and the person to whom the complaint was directed shall be notified, by the appropriate persons, personally and in writing, of the findings of the investigation regarding the complaint and any action being taken by the City.
13. If the complainant and/or the person(s) to whom the complaint was directed, does not agree with the actions taken by the City, they may take any action appropriate under Chapters 25, 27, or 28.
14. The City Manager or the City Attorney, as appropriate, may reasonably modify and extend the time limits set forth above, provided that such modifications are made in writing.

#### **11.05 Investigations**

- A. The complaint shall be addressed swiftly and as confidentially as possible.
- B. An employee utilizing this complaint procedure will and shall be treated courteously throughout the investigative process.
- C. All employees **MUST** cooperate in any City-authorized investigation by truthfully disclosing to the City's investigator, all relevant information they possess. Failure to do so may result in discipline, up to and including termination of employment.
- D. During any formal investigation an employee who is interviewed shall have the option of having an observer present during a fact-finding interview of that employee.
  1. The observer must be available on reasonable notice so that the interview is not unreasonably delayed.
  2. The observer shall not directly be involved in the incident nor shall the observer be a confidential employee, as defined by the City's Meet and Confer Ordinance No. O2008-07-004, or a member of the City Council.
  3. The observer shall not interfere with or participate in the interview process.
  4. The observer shall maintain as confidential all information learned in the interview.
  5. If there is an allegation that the observer has not complied with these regulations, then the matter shall be immediately referred to the City Manager or his designee for a determination of whether the observer shall be disqualified. At the option of the City's investigator, the interview may be adjourned and rescheduled pending a decision.



6. The Human Resources Director or designee shall attend all interviews of employees conducted as part of a formal investigation, or shall cause the interview to be recorded by use of audio or video technology.
- E. Notes, memorandums, reports, and other materials prepared and/or generated (excluding any disciplinary action taken) in connection with a complaint shall be deemed confidential and not subject to disclosure.

#### **11.06 Discipline**

Notwithstanding the stated general policy of the imposition of progressive and cumulative discipline, (see generally §26.01), an employee who violates this chapter may be immediately dismissed.

#### **11.07 Workplace Notices**

The Human Resources Director shall post notices summarizing the contents of this Chapter in all City work centers.

## CHAPTER 12

### WORKPLACE VIOLENCE & WEAPONS

#### 12.01 Workplace Violence

- A. Zero Tolerance. Violence or the threat of violence by or against any employee of the City is prohibited and will not be tolerated.
  - 1. The City will take all steps deemed necessary to protect its workforce from violence.
  - 2. The City will fully cooperate with the efforts of law enforcement to prosecute anyone engaging in violent acts or threats of violence.
- B. Obligation. It is the individual and mutual obligation of all City employees to prevent, or defuse, actual or implied violent behavior in the workplace.
- C. Report. All threats, threats of violence, or violent acts, whether by co-workers or individuals outside the City, shall be promptly reported.

#### 12.02 Weapon Prohibition

- A. Prohibition. The unauthorized unlawful possession, use or threat of use of firearms, weapons or other objects which could be used as weapons likely to cause injury, are prohibited in the workplace and within or on any City property, including City vehicles, while an employee is on duty.
  - 1. Certified peace officers are exempted.
  - 2. For the purpose of this policy, City property is any structure, facility, premises or land owned or leased by the City, including City-sponsored events.
- B. Concealed Weapons Permit. A concealed weapons permit issued pursuant to law is not an authorization to possess a weapon in violation of this policy.

#### 12.03 Discipline

Notwithstanding the stated general policy of the imposition of progressive and cumulative discipline (§26.01), an employee who violates this chapter may be immediately dismissed.

## CHAPTER 13

### WHISTLE BLOWER & RETALIATION

#### 13.01 Whistle Blower & Retaliation

- A. No employee shall be victimized, penalized, or subjected to any disciplinary action, reprimand, suspension, demotion, harassment, or intimidation for making a complaint, filing a grievance, or disclosing information of wrongdoing, illegal conduct, or violations of federal or state law, City ordinance, regulation, directive, or policy if such is done in good faith and upon a reasonable belief or basis.
  - 1. An employee making a complaint, filing a grievance, or disclosing information alleging illegal or wrong doing, in bad faith, or without reasonable belief or basis, or knowingly provides false or maliciously false or inaccurate information, shall be subject to appropriate disciplinary action.
- B. No employee shall be victimized, penalized, or subjected to any adverse action by the City for personal or political considerations.

## CHAPTER 14

### DRUGS & ALCOHOL IN THE WORKPLACE

#### 14.01 Drug/Alcohol Free Workplace

- A. City values its employees and recognizes their need for a safe and healthy work environment. Employees abusing drugs and alcohol are less productive and are often a risk to the safety and productivity of the City.
- B. The City is a Drug and Alcohol Free Workplace.

#### 14.02 Prohibition / Zero Tolerance

- A. The City strictly prohibits the following:
  - 1. Use of Illegal Drugs. Illegal drug use includes possessing, using, purchasing, distributing, selling illegal drugs while at work, working while impaired by illegal drugs or with the presence of any detectable amount of illegal drugs in the employees system while at work regardless of when or where the substance entered the employees system.
    - a. Illegal drugs include any drug or drug like substance considered unlawful under either State or Federal law.
    - b. Illegal drugs include prescription drugs not taken in accordance with a valid prescription given to the employee.
  - 2. Alcohol Abuse. Alcohol abuse includes possessing, using, purchasing, distributing, or selling alcoholic beverages, while at work, working while impaired by alcohol, under the influence of alcohol, or with the presence of any detectable amount of alcohol in the employees system while at work regardless of when or where the substance entered the employees system.
- B. Use of Legal and Prescription Drugs Authorized by a Physician. Certain legal and prescription drugs can produce changes in persons that might indicate intoxication or illegal drug use and could result in a “positive” result on a substance abuse screening test.
  - 1. Employees may work while taking prescription drugs at the direction of a doctor, or non-prescription drugs used for the purposes and in the manner intended, provided the medication does not adversely affect the employee’s ability to perform his or her work in a safe and efficient manner.
    - a. Each employee is responsible for being aware of and following all cautions associated with the use of prescription or non-prescription drugs.
    - b. All prescription or non-prescription drugs being taken by an employee which could have side effects affecting the employee’s job performance, shall be immediately reported to the employee’s supervisor.
    - c. The City has the right to determine whether an employee who is receiving legal medication should be allowed to continue working during his or her treatment due to possible safety and/or performance problems.

### 14.03 Drug/Alcohol Screening

- A. Pre-Employment Screening. Offers of employment with the City will be conditioned on successfully passing a drug and controlled substance screening test.
  - 1. Following a conditional employment offer, applicants will be asked to sign a form consenting to a screening test as part of the application process.
  - 2. Failure to sign the consent form will be considered a withdrawal of the conditional job offer.
  - 3. Applicants who test positive without a legitimate medical reason will be denied employment and will be ineligible to re-apply for employment with the City for a period of six (6) months.
  - 4. In appropriate circumstances, the City may, in its sole discretion, authorize a retest.
- B. For Cause Testing. The City may ask an employee to submit to a drug or alcohol test based upon credible information or evidence that the employee may be using or under the influence of drugs or alcohol, including, but not limited to, the following circumstances
  - 1. Evidence of drugs or alcohol on or about the employees person or in the employees vicinity,
  - 2. Conduct on the employees' part that suggests impairment or influence of drugs or alcohol,
  - 3. Negative performance patterns, or
  - 4. Excessive and unexplained absenteeism or tardiness.
- C. Post-Accident Testing. An employee involved in an on-the-job accident or injury may be asked to submit to a drug and/or alcohol test.
  - 1. "An employee involved in an on-the-job accident or injury" includes not only the employee who was involved in the accident, or injured, but also any employee who potentially caused or contributed to the accident or injury event in any way.
- D. Random Testing. The City shall, in accordance with applicable State or Federal law, at random, test all certified Police Officers and employees required to have a commercial driver license (CDL) under Federal law.
- E. Testing Procedures. An employee asked to submit to testing will be informed of the reasons, cause or action leading to the request.
  - 1. Employees will complete a "consent for testing" form.
  - 2. Testing will be conducted by an appropriate testing facility designated by the City.
    - a. Applicants and employees must cooperate fully with reasonable procedures and requirements of the testing facility.
  - 3. Each employee and applicant who is to be tested will be asked by the City designated testing facility to list all alcohol, legal and prescription drugs consumed during the past thirty (30) days, and will have an opportunity to explain the use of each such drug.
  - 4. Positive test results will be given a second verification test by the City designated testing facility.
  - 5. Test results will be returned to the City for review with the applicant or employee.

- a. Test results will be maintained in a confidential manner in a separate file not part of the employees personnel file.
- b. Test results of applicants will be maintained in a separate file, not part of the application.
- c. City will keep the results of any drug, substance abuse or other such test confidential.

#### **14.04 Discipline**

Notwithstanding the stated general policy of the imposition of progressive and cumulative discipline (§26.01), an employee who violates this chapter, tests positive, refuses to submit to drug or alcohol testing, refuses to sign all appropriate forms, or otherwise fails to comply with this chapter may be immediately dismissed.

## CHAPTER 15

### USE OF PROPERTY, PRIVACY RIGHTS & VEHICLE ACCIDENT PREVENTION (Amendment as per Order No. 2020-12-073 on 12/2/2020)

#### 15.01 City Property Use

- A. Utilization of City premises, services, e-mail, internet, offices, desks, computers, telephones, electronic and communication devices, vehicles or other equipment of whatever type or nature constitutes use of City property.
  - 1. City property is provided to employees solely for their use in fulfilling their employment duties.
  - 2. Use of City property must always conform to all applicable local, state or federal law, City policies, and directives.

#### 15.02 Right to Monitor and Search

- A. City reserves the right to monitor the use and conduct searches of its property, services, and premises.
  - 1. Employees do not have an expectation of privacy in any City property, equipment, or in any matter, information, documents, and/or communications created, transported or stored in or on City computers, equipment, or property.

#### 15.03 Vehicle Accident Prevention Policy

- A. Purpose
  - 1. This policy establishes an accident prevention program with a minimum set of safety regulations standards and disciplinary procedures to be completely enforced. It is expected that all individuals driving city vehicles fully understand and follow this policy.
  - 2. It is the responsibility of all department directors and supervisors to enforce these policies.
  - 3. Safe driving must be emphasized at all times. The goal of this policy is to improve safety awareness and performance in addition to creating a system of accountability for any individual who is trusted with the responsibility of operating a City vehicle or motorized equipment.
  - 4. The primary objective of vehicular accident prevention is to avoid injuries to individuals, both City employees and other members of the traveling public, as well as pursuing an overall goal of preventing damage to vehicles and other property.
- B. Definitions
  - 1. Motor Vehicle Accident, is any contact by any City vehicle or motorized equipment with any person or object that it was not intended to come in contact with which causes creates or leaves any damage to the vehicle the person or the object whether visible or not.
  - 2. Abuse of a vehicle or equipment is any intentional operation beyond the specified purpose or capabilities for the vehicle or equipment that may result in inordinate wear or damage.
  - 3. Driver/Operator, of any vehicle or equipment is a person who is assigned assumes or takes responsibility whether directly or indirectly for the operation of any City vehicle or equipment or any person who is at any time in actual physical control of any vehicle or equipment

4. City Vehicle is any vehicle that requires a license to operate that is registered or owned, leased or rented by the City of Nogales.
5. Motorized Equipment is any piece of motorized self-propelled equipment (tractors, road building equipment, forklifts, scissor jacks, etc.) that is registered or owned, leased or rented by the City of Nogales.

C. Minimum Standards and Regulations for All Drivers

1. Drivers/operators should always practice good courteous defensive driving habits. All drivers/operators shall comply with the applicable local, state and federal traffic laws at all times by observing posted laws and regulations speeds traffic control signals and signs pertaining to the operation of motor vehicles on public streets and highways.
2. Seat belts must be worn at all times in all vehicles. The possession transportation or consumption of any alcoholic beverage or any controlled substance within or upon any City vehicle is strictly prohibited. No personal business may be conducted using a City vehicle unless specifically approved by the City Manager or designee. No unauthorized passengers may ride in a City vehicle unless specifically approved by the City Manager or designee. City employees riding as passengers and conducting business with the City are considered to be authorized.
3. Any substantiated report of tailgating, speeding or other unsafe driving behavior will be subject to disciplinary procedures up to and including termination. All moving violations or traffic citations shall be immediately reported to a supervisor as soon as practical by any employee involved in or witnessed to any motor vehicle or motorized equipment accident.
4. No person hired will operate a vehicle for City business without possessing a valid current Arizona driver license. Any change in an employee's driver's license to include suspensions and revocations, loss of endorsements or change off address shall be reported immediately to the supervisor.
5. All moving violations or citations will be the responsibility of the driver whether driving a City vehicle or not the City will not pay for any costs associated with violations or citations.
6. Smoking is expressly prohibited in all City vehicles. This applies to all employees of the City as well as volunteers or employees of other agencies performing work for the City. It shall also apply to any member of the public who has access to a City vehicle as a passenger. The assigned driver/operator is at all times responsible for insuring that no one smokes in the vehicle
7. All employees should exercise reasonable care and caution if it is necessary to answer a cell phone or radio call while operating a city vehicle.
8. It is the total responsibility of the driver/operator assigned to a city vehicle to conduct daily inspections of the city vehicle. The Inspection forms should be turned in to the Fleet Manager if repairs or service is required.
9. Out-of-state applicants will be required to furnish a copy of their driver license record prior to the offer of employment and will be required to obtain an Arizona Driver's License as a condition of employment if their employment is conditioned on the use of a city vehicle.
10. Annually, the City may request a copy of the Motor Vehicle Record MVR through the Arizona Department of Transportation Motor Vehicle Division for all City employees and volunteer drivers. The City reserves the right to check MVRs at any time for proof of valid driver license, License revocation or suspension DUI DWI or any drug violation shall be cause for disciplinary action up to and including termination.



#### D. In Case of an Accident

1. In reporting an accident, the supervisor will assure that all drivers/operators have been adequately trained in action procedures when an accident occurs. All accidents will be immediately reported to a supervisor. All accidents that occur on a city street or highway as well as any accident that involved serious injury or death shall be reported to the Nogales Police Department or to the proper law enforcement agency or 911 when traveling outside of the city limits.
2. All department directors shall insure that all accidents are carefully investigated in a prompt manner by the proper person(s) to determine accident cause and fault (responsibility). Answer all questions truthfully when asked by the police agency investigating the accident. Do not give a signed statement to the claims adjuster representing the other driver insurance company.
3. Do not speak to the claims adjuster representing the other driver's insurance company without the presence of a representative of the City Attorney's Office or an attorney supplied by the City's insurance carrier.
4. Human Resources working with the City Manager's office will conduct all investigations involving a motor vehicle accident as follows:

#### **Accident Data Review**

Senior Management role is to assure uniformity of accountability in establishing the cause of accidents whether preventable or non-preventable and make recommendations for corrective action.

#### **Establish a cause of accident for all traffic accidents involving the operation all City Motor Vehicles**

- Driver's report of the accident
- Police report
- External Incident reports
- Employee has written statement and documents
- Statements of Witnesses
- Diagrams, photographs, and other available evidence
- Director/Supervisors statement regarding the employees work performances
- Director/ Fleet Managers Vehicle report RE: Pre-trip inspection form listing any defects noted, defects if any caused by driver's handling, violation of City operating rule and/or special instruction, lack of proper training, driver fatigue/fell asleep at the wheel.
- Determine if the accident was preventable, human error, or if the employee is at fault
- Establish if there were any violations of established City safety rules and regulations
- Determine if there were any violations of Arizona Traffic laws
- Determine corrective measures to be taken

#### **Results of an investigation**

- Identify specific problematic behavior
- If warranted, mandate attendance at a "Defensive Driving" course at the employee's expense
- Document coaching sessions with the Department Director and immediate Supervisor
- Depending on the severity of the situation, suspension of City driving privileges can be considered.

#### E. Employee Accountability for Vehicular Accidents

1. Department Directors of drivers involved in an accident deemed to be preventable under City guidelines shall review all reports generated, discuss the matter with the employee, and discipline the employee as appropriate.
2. Repeated at fault accidents or accidents deemed to be caused by gross negligence may result in immediate dismissal.
3. If it is determined that action is required in the form of discipline the following guidelines will be followed.

**First Preventable Minor Accident**

- Reemphasize management's concern for all employees' safety and establish that operating a City Motor Vehicle safely is part of the employees' overall performance evaluation.
- Reiterate the consequences of continued accidents will result with progressive disciplinary action.

**Second Preventable Minor Accident**

- Given the severity of the incident issue a formal letter of discipline informing the employee that additional infractions may result in termination
- Consideration of additional "Defensive Driving" class at the employee's expense
- Suspension of the employee without pay for one week
- Suspension of all driving privileges
- Issue a written plan of action to improve the employee's work performance

**Third Preventable Accident**

- Recommendation for termination of employment

**First Employee at-Fault Major Accident (personal injuries and/or substantial property damage)**

- Normally, suspension of the employee without pay for one week
- Consider revocation of employee's City driving privileges
- Employee responsible for paying one-half of the City Deductible rate

**Second Employee at-Fault Major Accident**

- Revocation of employee's City driving privileges; if this results in employee failing to meet minimum job qualifications, termination should ensue
- Consider disciplinary termination

**F. Training**

1. All employees who operate City vehicles or personal vehicles while conducting City business should participate in an annual Safe Driver Awareness Refresher course. This course will be conducted as part of each Department annual training program.
2. The Human Resources Director will ensure that the annual Safe Driver Awareness Refresher course is completed by all departments and will assist departments with resources and materials for annual refresher classes.
3. The Human Resources Director will perform annual Motor Vehicle Record (MVR) checks on an ongoing basis.
4. The Human Resources Director will work closely with the Fleet Services Manager to establish goals and objectives of the accident prevention program, and jointly review and log all vehicular incident reports and investigations and make recommendations of accident prevention actions to the City Manager.

## CHAPTER 16

### WORKING HOURS, ATTENDANCE & PAYDAY

#### 16.01 Basic Working Hours

- A. Working hours for full-time City employees shall be forty (40) hours weekly, fifty-two (52) weeks annually, consisting of eight (8) hours per day, customarily from 8:00 am to 5:00 pm, Monday through Friday.
  - 1. Modifications to this schedule may be made by the City Manager, or by a department director with the written approval of the City Manager, subject to any local, state or federal legal limitations and/or requirements.
- B. The work period for Fire Department personnel working twenty-four (24) hour shifts shall be:
  - 1. Twenty-four (24) hour work shifts from 8:00 a.m. and ending 8:00 a.m. the following day.
  - 2. Twenty-four (24) hour work shift schedules shall consist of twenty-four (24) consecutive hours on duty followed by forty-eight (48) off duty hours.

#### 16.02 Meal and Rest Periods

- A. Unpaid, uninterrupted meal periods shall be scheduled for employees working more than six (6) hours a day.
  - 1. The meal period shall be for a period of one (1) hour and shall be scheduled by the department director.
  - 2. The meal period shall not be used in connection with rest periods or used for early dismissal at the end of the day.
- B. Employees scheduled to work four (4) or more continuous hours shall be given fifteen (15) minutes during each four (4) hour period for a personal rest period.
  - 1. Personal rest periods shall not be cumulative or used for late arrival to work, or used in connection with meal periods, or early dismissal at the end of the work day.
- C. The City Manager in his sole discretion may approve a deviation of the above policy (sections A and B) if specific extenuating factors are present, subject to any local, state, or federal legal limitations and requirements.
  - 1. The specific and extenuating factors justify a policy deviation shall be set forth in writing.
  - 2. The deviation in policy shall be clearly set forth in writing, and approved by the City Attorney.
- D. The provisions in these Rules relating to grievance (Chapter 25) and appeals (Chapter 27) shall not apply to City Manager decisions made pursuant to section C above.

#### 16.03 Absences and Tardiness

- A. Employees shall provide notice of scheduled absences as far in advance of the absence as possible.
- B. Employees shall provide notice of an unscheduled absence as soon as possible.
- C. Employees shall provide notice of anticipated tardiness as far in advance of the tardiness as possible.

1. The employee's supervisor shall determine if work time lost due to tardiness may be made up by the employee or if the employee will be required to use accrued leave balances or take leave without pay.
  2. If authorized by the employee's supervisor, the employee may make up work time lost due to tardiness only during the work week in which it occurs
- D. Notification of an unscheduled absence or tardiness by another employee, friend, or relative is not considered proper notice except in a situation where the employee is unable to make the notification.

#### **16.04 Payday**

- A. City employees shall be paid on a bi-weekly schedule consisting of an eighty (80) hour work period, plus additional overtime.
- B. Fire Department personnel working twenty-four (24) hour shifts shall be paid on a bi-weekly schedule consisting of equal averaged work periods of 102.00 regular hours plus 10.00 overtime hours (2,912 total annual hours) plus additional overtime.

## CHAPTER 17

### OVERTIME, COMPENSATORY TIME & ON-CALL PAY

#### 17.01 Definitions

- A. "Overtime" means:
1. For employees working eight (8) hour shifts (2,080 hours annually)
    - a) Actual hours worked in excess of forty (40) hours per week
  2. For Fire department personnel working twenty-four (24) hour shifts (2,652 hours annually)
    - a) Actual hours worked in excess of one hundred two (102) hours per work period
- B. Regular "hourly rate" means:
1. For employees working eight (8) hour shifts (2,080 annual hours)
    - a) Annual pay divided by 2,080 annual hours
  2. For Fire Department personnel working twenty-four (24) hour shifts
    - a) Annual pay divided by 2,652 annual hours
- C. For purposes of computing overtime hours worked, sick leave, holiday leave, vacation leave, or compensatory time, shall be excluded.
- D. "Compensatory time" means earned time recorded on an employees pay record in lieu of overtime pay.

#### 17.02 Overtime / Compensation Time (Amendment as per Order No. 2020-09-051 on 09/04/20)

- A. A non-exempt status employee, who works overtime hours permitted by FLSA shall be compensated by either:
1. Additional overtime pay at the rate of one and one-half (1½) times the employees regular hourly rate for each hour worked in excess of forty (40) hours in a workweek; or
  2. Compensatory time at the rate of one and one-half (1½) hours for each excess hour worked.
- B. Compensation for overtime work by either additional overtime pay or compensatory time shall be determined at the discretion of the City Manager.
1. Overtime shall not exceed thirty (30%) percent of an employees' regularly scheduled hours worked within a two week pay period. In the case of emergency situations and/or unanticipated needs, employees shall be required to work in excess of the hours listed above, at the direction of department directors. In such case, department directors shall provide, in writing, a report justifying the need and circumstances to exceed the overtime hours worked listed above to the city manager.
  2. Employees who have accrued eighty (80) hours of compensatory time are not eligible to accrue any additional compensatory time.
  3. Employees who have accrued the maximum allowable compensatory time shall be paid overtime for any additional overtime worked.

- C. Accrued compensatory time shall be used before the utilization of vacation or sick leave.
- D. Unused compensatory time shall be paid to all employees upon their retirement or termination of employment with the City.
  - 1. Accrued compensatory time shall be paid at the rate of one and one-half (1½) times the employee's regular hourly rate as of the last day of employment.
  - 2. The provisions contained in these Rules relating to grievances (Chapter 25) and Appeals (Chapter 27) shall not apply to City Manager decisions to utilize or not utilize compensatory time or additional overtime pay.

### **17.03 Call-Back and On-Call**

#### **A. Call-Back Period and Compensation**

- 1. An employee who is called-back to work in a non-scheduled or emergency situation on any given day and who returns to work after having left the place of work and after having otherwise completed the work shift whether that shift was of an extended duration or not, shall be compensated at the rate of one and one-half (1½) times the employee's regular hourly rate for actual time worked during such call-back.
  - a. An employee called back to work shall receive compensation for not less than two (2) hours for the employee's initial call back, except for holidays as set forth below; subsequent call back for the same day shall be compensated at the rate of one and one-half (1½) time the employee's regular hourly rate for actual time worked.
  - b. 'Returns to work' shall not include responding to simple requests, taking telephone calls, or other activities not requiring an employee to leave the employee's after work locale.
- 2. Employees who are called-back to work on a scheduled day off shall also be compensated as provided above.
- 3. Employees called back to work on a scheduled holiday shall be compensated as set forth in Chapter 19.
- 4. On-call employees (section B. below) called back to work on a scheduled holiday shall be compensated as set forth in Chapter 19.
- 5. Compensable call back time shall include all time during which an employee is actively engaged in work activity plus reasonable travel time to and from the work site.

#### **B. On-Call Duty and Compensation**

- 1. On-call compensation is compensation paid for the restriction of an employee's time and movement.
- 2. Employees on "on-call duty" shall receive compensation at the rate of one and one-half (1½) the employees regular hourly rate as follows:
  - a. Two (2) hours for on-call duty Monday through Friday, and Saturday.
  - b. Four (4) hours for on-call duty for Sunday or holidays.
- 3. The determination as to whether or not the time an employee is on-call needs to be counted as compensable working time depends upon the employee's freedom while on-call.
  - a. If an employee can come and go freely, even though a telephone number where they can be reached is requested, the employee is not "on call" and the time is not compensable.

- b. If an employee's time and movement is so restricted that the employee cannot use the time freely, the time is compensable; such restriction must be established in writing.
- 4. Location of the employee for on-call duty shall be at the employees' discretion with the stipulation that immediate contact can be made, and that the employee must be able to report fit for duty within thirty (30) minutes.
- 5. An employee on "on-call duty", in addition to on-call compensation, if called back to work shall be compensated as set forth in section A above.

**17.04 Allocation**

- A. Overtime, compensatory time, on-call time, or call back time shall be allocated as evenly as possible among all employees qualified to do the work. While preference may be given to those employees who wish to volunteer for the work, all employees are required to work additional time when requested to do so.
- B. It shall be the responsibility of each department director to:
  - 1. Schedule working time among employees in such a manner as to require little or no overtime, compensatory time, on-call time, or call back time; and
  - 2. Monitor the reporting of time by reporting personnel to ensure accuracy of time claimed.
- C. It shall be the responsibility of each City employee to accurately record all hours worked on the employee's time sheet.
  - 1. Employees shall work only those overtime hours authorized and approved in advance.

**17.05 Exempt Employees**

- A. Employees in positions classified as exempt, as defined by FLSA, shall be required to work regular working hours as set forth in §16.01, and any additional hours needed to fulfill the responsibilities of the position.
- B. Employees in positions classified as exempt, as defined by FLSA, are ineligible to receive overtime payments, compensatory time off, call back pay, or on-call pay unless specifically authorized in writing by the City Manager.
- C. Exempt status employees are entitled to time off as set forth in §18.05(G).

## CHAPTER 18

### VACATION, SICK & OTHER LEAVE

#### 18.01 Work Day

- A. For purposes of this chapter, a work day shall be defined as an eight (8) hour day
  - 1. Fire Department personnel working twenty-four (24) hour shifts, the work day shall be defined as a twenty-four (24) hour day.

#### 18.02 Vacation Leave

##### A. Monthly Accrual Rates.

- 1. All full-time employees shall accrue vacation leave as follows:

0 through 60 months' continuous employment	12 work days per calendar year
61 through 120 months' continuous employment	15 work days per calendar year
121 months or more continuous employment	20 work days per calendar year

##### B. Authorized Use.

- 1. Reasonable and timely requests by an employee for vacation leave shall be authorized so long as such request does not unduly disrupt the operation of City.
- 2. An employee's request for vacation leave shall be timely addressed.
  - a. Decisions regarding vacation leave requests shall be promptly conveyed to the employee.
- 3. In the event an employee's requested vacation leave cannot be granted, and such denial will result in the accumulation of vacation leave in excess of the permitted maximum accrual, the vacation leave in excess of the permitted maximum accrual may be taken within the first ninety (90) days of the succeeding year, subject to the following conditions:
  - a. The requested vacation leave was reasonably and timely made by employee.
  - b. The denial of the requested vacation leave was not due to the fault of employee.
  - c. The deferred use of vacation leave is approved by the department director and the City Manager.
- 4. New employees shall be entitled to the use of accrued vacation leave only upon the successful completion of their probationary period.

##### C. Maximum accrual.

- 1. Eight (8) hour shift employees may not accrue vacation leave in excess of 240 hours.
- 2. Fire Department personnel working twenty-four (24) hour shifts may not accrue vacation leave in excess of 360 hours.
- 3. Any accrued vacation leave in excess of 240 hours or 360 hours for Fire Department personnel working twenty-four (24) hour shifts, on balance as of December 31 of each year, shall be reduced to 240 hours or



360 hours for Fire Department personnel on January 1 of each year, and the employee shall forfeit the right to the use of such excess vacation leave.

4. For Fire Department personnel working twenty-four (24) hour shifts who are subsequently assigned to work eight (8) hour shifts.
  - a. Vacation leave earned and accrued in excess of 240 hours shall not be reduced and shall be placed in a separate vacation leave account, payable, at termination or retirement, at the employees then twenty-four (24) shift hourly rate.
  - b. Shall not accrue additional vacation leave in excess of 240 hours.
5. An employee may transfer vacation leave pursuant to §18.04 below.

D. Emergency Sale of Vacation Hours.

1. In the case of an emergency, an employee may request the sale of accrued vacation hours.
  - a. The employee shall submit a written request, through the department director to the City Manager.
  - b. Within ten (10) working days of the request the City Manager will appoint a three (3) member committee to consider the request.
  - c. The committee shall consist of one (1) department director and two (2) non-exempt status employees.
  - d. The committee, in its sole discretion, shall determine if the request is appropriate and should be granted.
  - e. If approved, the sale of vacation hours shall be paid at the employees' then current salary.
  - f. The sale of vacation hours under this section shall not exceed the employee's salary for a bi-weekly regular work period per calendar year.

E. Discretionary Sale of Vacation Hours.

1. The City Manager, in his sole discretion, may provide for the sale of accrued vacation time.
  - a. The City Manager shall establish the terms and conditions of such sale.
  - b. Sale of vacation hours shall be paid at the employees' then current hourly rate of pay.
  - c. The sale of vacation hours shall not exceed twenty (20) hours per calendar year.
2. The provisions contained in these Rules relating to grievances (Chapter 25) and appeals (Chapter 27) shall not apply to City Manager decisions made hereunder.

F. Termination / Retirement.

1. All accrued unused vacation leave, shall be paid to all employees upon termination, or retirement, subject to the following:
  - a. Payment up to a maximum of 240 hours for eight (8) hour employees
  - b. 360 hours for Fire Department Personnel working twenty-four (24) hour shifts

2. The accrued vacation leave shall be paid at the employee's hourly rate of pay as of the last day of employment.

### **18.03 Sick Leave (Amendment as per Order No. 2019-02-005 on 02/06/2019)**

#### A. Accrual.

1. All full-time permanent employees shall accrue paid sick time off at the rate of one work-day per month.
2. Permanent part-time employees shall accrue paid sick time off pro-rata to a full-time employee based on their work schedule.
3. All other employees shall accrue paid sick time off at the rate established by law.
4. An employee must have accrued paid sick time off before it may be used pursuant to this section.
5. Any employee who is re-hired within nine (9) months of separation from the City's employment shall have previously accrued paid sick time off what was not used or paid out reinstated.

#### B. Authorized Use.

All employees may use accrued paid sick time off for:

1. An employee's mental or physical illness, injury or health condition; an employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; an employee's need for preventive medical care; or
2. Care of a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; care of a family member who needs preventive medical care; or
3. Absence necessary due to domestic violence, sexual violence, abuse or stalking, provided the leave is to allow the employee to obtain for the employee or the employee's family member:
  - a. Medical attention needed to recover from physical or psychological injury or disability caused by domestic violence, sexual violence, and abuse or stalking;
  - b. Services from a domestic violence or sexual violence program or victim services organization;
  - c. Psychological or other counseling;
  - d. Relocation or taking steps to secure an existing home due to the domestic violence, sexual violence, abuse or stalking; or
  - e. Legal services, including but not limited to preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic violence, sexual violence, abuse or stalking.
4. "Family member" shall have the same definition as found in A.R.S. Title 23 Chapter 2 Article 8.1.

#### C. Notification.

1. All employees shall notify their supervisor by the best means possible as far in advance as possible prior to using paid sick time off. Where possible, notice shall include an estimate of the time off needed; otherwise, employees must provide additional notice for each additional day paid sick time off that is used.

2. In the absence of alternative specific written instructions from their supervisor or department head, employees shall notify their supervisor in person, by phone, email or by text message prior to leaving their assigned work duties or not showing up for their next shift, or as soon thereafter as conditions allow.
3. Where the need for paid sick time off is foreseeable, the employee shall make a reasonable effort to schedule the use of paid sick time off in a manner that does not unduly disrupt the operations of the work center.

D. Documentation.

1. Whenever paid sick time off is used for three or more consecutive days, the employee shall provide their supervisor with reasonable documentation showing that the paid sick time off was for an authorized use.
2. The documentation need not reveal details of the condition or circumstance requiring time off, and a signed statement from a health professional stating that use of paid sick time off is necessary shall satisfy this requirement.

E. Termination / Retirement

1. Accrued sick leave shall be paid to employees upon retirement or termination of employment subject to the following:
  - a. Employee has more than five (5) years continuous service with the City,
  - b. Employee has 240 or more unused sick leave hours or 360 or more hours for Fire Department personnel working twenty-four (24) hour shifts,
  - c. Termination is not the result of disciplinary action.
2. Accrued sick leave shall be paid as follows:
  - a. After completion of five (5) consecutive years, fifteen percent (15%) of all unused sick leave.
  - b. After completion of ten (10) consecutive years, twenty-five percent (25%) of all unused sick leave.
  - c. After completion of fifteen (15) consecutive years, thirty-five percent (35%) of all unused sick leave.
  - d. After completion of twenty (20) consecutive years, forty-five percent (45%) of all unused sick leave.
3. The accrued sick leave shall be paid at the employee's hourly rate of pay as of the last day of employment.

**18.04 Donation of Accrued Sick/Vacation Leave**

- A. An employee's accrued vacation or sick leave may be donated and transferred to another City employee in accordance with the following:
  1. The transferring and receiving employees are full-time employees who have completed their initial probationary period, and who have no pending disciplinary action;
  2. The receiving employee does not have any available accrued vacation, compensatory, or sick leave for use;
  3. The receiving employee is experiencing an emergency due to personal illness, illness of a member of the immediate family, or is on Family Medical Leave Act (FMLA) leave.
- B. The request for transfer of accrued leave shall be made in writing to the department director.

1. The request for transfer of accrued leave shall be forwarded to the City Manager.
  2. The request for transfer of accrued leave shall be approved unless the request will unduly disrupt the operations of the City.
- C. Employees donating and transferring their accrued vacation or sick leave must do so in writing.
1. Employees may transfer a maximum of eighty (80) hours (10 work days) per calendar year.
    - a) Fire Department personnel may transfer a maximum of two hundred forty (240) hours (10 work days) per calendar year.
  2. Employees may receive a maximum of two hundred forty (240) hours of transferred leave per calendar year (30 work days).
  3. Fire Department personnel working twenty-four (24) hour shifts may receive a maximum of seven hundred twenty (720) hours of transferred leave per calendar year (30 work days).
  4. In the sole discretion of the City Manager, the maximums set forth in 1 and 2 above may be increased.
    - a. The provisions contained in these Rules relating to grievances (Chapter 25) and appeals (Chapter 27) shall not apply to City Manager decisions made hereunder.
- D. Donated hours will be pooled and paid at the receiving employee's regular rate of pay.
1. Donated hours not utilized shall be returned to the transferring employee(s).
- E. An employee may not accrue vacation or sick leave while receiving donated leave.

#### **18.05 Other Leaves of Absence With Pay**

##### **A. Bereavement/Funeral Leave**

1. In the event of the death of the employee's spouse, or the parent(s), grandparent(s), child(ren), or siblings of the employee or the employee's spouse, the employee shall have bereavement/funeral leave as follows:
  - a. Three (3) work days.
  - b. If travel exceeding 250 miles (one way) is required by the employee, the employee shall have bereavement / funeral leave of five (5) work days.
2. At the discretion of the department director an employee may be granted bereavement/funeral leave to attend the funeral of another City employee.

##### **B. Voting**

1. Two (2) hours leave with pay may be utilized for voting by an employee who is registered and qualified to vote on special, primary and general election days.
  - a. Such leave shall be utilized at the beginning or at the end of the employee's work shift.

### C. Workers' Compensation.

1. Employees who receive benefits from Workers' Compensation while off work for a job-related injury/illness may request in writing that accrued sick, vacation, and compensatory leave, be used to supplement the Workers' Compensation benefit.
  - a. Employees shall submit their disability payment to the City in exchange for payment of normal salary.
  - b. The employee's leave accounts shall be charged.
  - c. Upon exhaustion of leave accruals, disability payments shall be retained by the employee and the employee shall be placed on leave without pay status.
2. Upon approval of the Workers' Compensation physician for specific types of modified duty, the department director will determine if there are any appropriate modified duty assignments available.
  - a. If an assignment is available, the employee shall report daily to his or her assigned supervisor for such duty.
  - b. If an assignment is not available, the employee shall be placed on leave without pay status.
  - c. Employees who are assigned to a department other than their own on temporary modified duty assignments will be paid at their regular rate of pay.
3. If an employee is unable to perform regular duties on or before the completion of the modified duty assignment, the department director and the Human Resources Director shall consider temporary or complete reassignment to another position in or out of the employee's current field:
  - a. Such position, if available, may involve a change of classification and compensation.
  - b. If no position is available for which the employee is qualified, the employee may be dismissed pursuant to §22.03.

### D. Jury Duty Leave

1. All employees of the City who are called or required to serve as a trial juror shall be excused from work during the period of such service or while necessarily being present in court as a result of such duty.
2. The employee shall receive full compensation from the City.
  - a. The employee shall relinquish to the City any compensation paid from the court for such duty.

### E. Subpoena Leave

1. All employees of the City shall be excused from work when required to appear in court pursuant to a subpoena.
  - a. The employee shall receive full compensation from the City.
  - b. The employee shall relinquish to the City any compensation paid for the court appearance.
2. Notwithstanding the above, an employee who has been subpoenaed to appear in court due to a personal or personal business matter or due to the employee's own unlawful conduct or misconduct shall not be entitled to subpoena leave with pay.

#### F. Short Term Military Leave

1. Employees who are members of the National Guard shall be granted leaves of absence from their duties without loss of time, pay or efficiency rating on all days during which they are employed on training duty or to attend camps, maneuvers, formations or drills under orders with any branch, reserve or auxiliary of the armed forces of the United States for a period not to exceed thirty (30) days in any two (2) consecutive years.
2. For purposes of this section, an employee shall not be charged military leave for days on which the individual was not otherwise scheduled for work.
3. The period of time spent in training under orders shall not be deducted from the vacation period with pay to which any employee is otherwise entitled.

#### G. Administrative Leave

1. Administrative leave is to compensate employees exempt from the Federal Fair Labor Standards Act for extraordinary hours worked.
2. Employees in positions classified as exempt, as defined by FLSA, may, at the City Manager's discretion, be granted eight (8) hours administrative leave per pay period.
  - a. Such leave may be utilized at employee's discretion so long as such does not unduly disrupt the operations of the City.
  - b. In addition, and in the sole discretion of the City Manager, additional time off may be provided.
3. Administrative leave not utilized by December 31 of each year shall be considered forfeited by the employee.
4. The provisions contained in these Rules relating to grievances (Chapter 25) and appeals (Chapter 27) shall not apply to City Manager decisions made under this section.

#### H. Confidential Leave

1. Confidential Leave is to compensate employees excluded from the provisions of the City's Meet and Confer ordinance (Ordinance no. O2008-07-004).
2. Employees occupying confidential employee positions under the ordinance referred to in section (1.) above may, at the Department Director's discretion, be granted eight (8) hours confidential leave per month.
  - a. Such leave may be utilized at the employee's discretion so long as such does not unduly disrupt the operations of the City.
3. Confidential leave not utilized by December 31 of each year shall be considered forfeited by the employee.
4. Leave under this section shall not apply to employees covered under section 18.05(G).
5. The provisions contained in these rules relating to grievances (Chapter 25) and appeals (Chapter 27) shall not apply to Department Director's decisions made under this section.

## 18.06 Leave of Absence Without Pay

### A. Family Medical Leave Act of 1993 (FMLA)

1. An employee is entitled to leave in accordance with the Family Medical Leave Act of 1993 (FMLA) as authorized and obligated by applicable state and federal law.
  - a. The specific obligations and rights of City and employee are as set forth in the enacted law and accompanying federal regulations and case law.
  - b. Terms of the FMLA control and supersede any terms or condition contained in these Rules.
2. The Human Resources Director shall ensure that current copies of the FMLA are available for employees.

### B. General

1. Under the FMLA, eligible employees may take up to twelve (12) workweeks of leave per year for certain family and medical reasons.
2. FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered service member during a single 12-month period.
3. Qualifying Exigency Leave of Absence.
  - a. An eligible employee is entitled to take up to twelve (12) workweeks of unpaid FMLA leave during any 12-month period due to a spouse, son, daughter or parent who is a member of one of the U.S. Armed Force's Reserve components or National Guard on active duty or is a reservist or member of the National Guard who faces recall to active federal service by the President if a Qualifying Exigency exists.
4. The City uses the rolling twelve-month method to measure the yearly period for leave entitlement.
  - a. In determining how much FMLA leave an otherwise eligible employee may take at any given time, the City will look to the previous twelve (12) months to determine whether that employee has already used some of his or her twelve (12) workweeks of FMLA leave.
  - b. The City reserves the right to change the method of calculating the 12-month period in accordance with FMLA.

### C. Leave Request and Approval

1. Requests for leave shall be submitted to the employees' department director on forms prescribed by the Human Resources Director, thirty (30) days prior to commencement of the leave period, or as soon as is practical.
  - a. The department director shall forward the request to the Human Resources Director recommending approval or denial.
  - b. The final decision concerning the request shall be made by the City Manager.
2. Employees who request foreseeable intermittent leave, or a reduced leave schedule based on planned treatment, must make a reasonable effort to schedule the treatment so as not to unduly disrupt the operations of the City.

D. Utilization of Leave

Employees shall be required to utilize accrued sick leave, compensatory leave, and vacation leave while on FMLA.

E. Insurance Coverage

1. During such time while on FMLA leave, that portion of the employee's health and life insurance premiums borne by the City shall continue to be paid by the City.
2. Employees who wish to continue health coverage and any supplemental health insurance policies during an FMLA approved leave must contact the Human Resources Director to arrange for the payment of employee premiums.
3. If an employee gives unequivocal notice that the employee will not return to work, the City's obligation to continue health benefits and to reinstate the employee ceases.
4. The City may recover any health insurance premiums paid on the employee's behalf, during the unpaid portion of FMLA leave, from those employees who do not return to work from an unpaid FMLA leave, unless the employee fails to return as a result of the continuation, recurrence or onset of a serious health condition or some other reason beyond the employee's control.

F. Failure to Return to Work

If an employee fails to return to work at the conclusion of the approved FMLA leave of absence, including any extension of such leave, the employee may be dismissed.

G. Accrual of Benefits While on Leave

Other than as otherwise covered by FMLA, an employee shall not accrue any sick or vacation leave while on leave without pay.

H. Return to Work After Leave

1. Employees returning from a leave of absence will be reinstated to their same job or to an equivalent job with equivalent pay, benefits and working conditions, including the same or substantially similar duties and responsibilities which require substantially equivalent skill, effort, responsibility, and authority.
2. In the event of lay-off or elimination of the position while an employee is on FMLA leave, the employee's return to work will be in accordance with Chapter 23.

**18.07 Other Leaves of Absence Without Pay**

A. Educational Leave of Absence

1. Upon completion of two (2) years of employment, an employee may request an educational leave of absence without pay not to exceed one (1) year.
2. A request for educational leave must be submitted to the department director at least ninety (90) calendar days prior to the intended commencement of the leave, and be approved by both the City Manager and by the department director.
  - a. City may limit or deny the leave request if, in the sole discretion of the City Manager, the leave would create an undue hardship to the City.



3. Employees on educational leave shall be required to utilize all accrued compensatory and vacation leave.
4. Employees on educational leave are responsible for paying health insurance premiums to the City for themselves and their covered dependents if they wish to remain covered.
5. An employee shall not accrue any sick or vacation leave while on educational leave.
6. Failure to return from an educational leave without pay within the agreed time or to secure an extension may result in dismissal.
  - a. Upon expiration of the educational leave, employee shall return to their former or equivalent position, salary, and seniority status.
  - b. In the event of lay off or elimination of the position while an employee is on educational leave without pay, the employee's return to work will be in accordance with Chapter 23
7. The provisions contained in these rules relating to grievances (Chapter 25) shall not apply to department directors and/or City Manager decisions made hereunder.

#### B. Active Military Duty

1. In accordance with the Uniformed Services Employment and Re-Employment Rights Act of 1994, full time employees who leave City employment for military service may request that they be placed on leave without pay for a period not to exceed five (5) years.
  - a. An employee requesting military leave shall make written request to the department director.
  - b. Failure to provide written notice and request for military leave shall constitute a knowing waiver of the employee's right to reinstatement following the employee's military service.
2. Employees returning from military service shall be reinstated to their former position in accordance with federal law.

#### C. Victim Leave Law

1. Employees shall be permitted to leave work to exercise the rights enumerated in A.R.S. §8-420 et seq and A.R.S. §13-4439 et seq to:
  - a. Exercise their rights as a victim of a crime.
  - b. Obtain an order of protection, an injunction against harassment or other injunction relief to help ensure the health, safety, or welfare of themselves or their children.
2. An employee leaving work as set forth above shall not be compensated while on victim leave.
3. An employee leaving work as set forth above may use accrued vacation or sick leave time while on victim leave.

#### D. Discretionary Leave

1. For good cause shown, and for a purpose not otherwise covered or in violation of these Rules, and employee may request unpaid leave not to exceed six (6) months.
2. A request must be submitted to the department director, and approved both by the department director and the City Manager.

- a. The City may limit or deny the leave requested if the leave, in the sole discretion of the City Manager, would create an undue hardship to the City.
3. If a discretionary leave is approved, the City Manager shall establish, in writing, specific conditions for utilization of the discretionary leave which shall include but not be limited to:
  - a. Use of accrued vacation, sick, compensatory, or other accrued time while on discretionary leave.
  - b. Payment of health insurance premium dues.
  - c. Length of discretionary leave.
  - d. Return to position upon expiration of discretionary leave.
  - e. Lay-off or elimination of position while on discretionary leave.
4. An employee shall not accrue any sick or vacation leave while on discretionary leave.
5. Failure to return from a discretionary leave within the agreed time may result in dismissal.
6. The provisions contained in these Rules relating to grievances (Chapter 25) or appeals (Chapter 27) shall not apply to department directors or City Manager decisions made hereunder.

## CHAPTER 19

### HOLIDAYS

#### 19.01 Holidays

- A. The following days shall be City holidays:
1. New Year's Day
  2. Martin Luther King Jr. Day
  3. Presidents' Day
  4. Memorial Day
  5. Independence Day
  6. Labor Day
  7. Veterans' Day
  8. Thanksgiving Day
  9. Day following Thanksgiving Day
  10. Christmas Day
  11. Floating Holiday per calendar year
- B. City offices and departments shall be closed on each of the holidays listed above, excepting the Floating Holiday.
1. If any of the listed holidays fall on a Sunday, the holiday shall be observed on the following Monday.
  2. If any of the listed holidays falls on a Saturday, the holiday shall be observed on the preceding Friday.
  3. No work shall be scheduled by an employee on a holiday unless approved in advance by the department director in writing.
  4. Work on a holiday shall only be scheduled as result of an emergency or unusual and extraordinary circumstance or in cases where the nature of the City's operations cannot be interrupted by the observance of the holiday.
- C. If any of the above holidays falls on an employee's regularly scheduled work day, the employee shall be paid holiday pay at the employee's regular hourly rate for eight (8) hours for such holiday.
- D. If any of the above holidays fall on an employee's regularly scheduled day off, the employee shall be paid holiday pay at the employee's regular rate of pay for eight (8) hours for such holiday.
- E. If an employee not regularly scheduled to work, works on a holiday, the employee shall be paid holiday pay at the employee's regular rate of pay for eight (8) hours.
1. In addition, the employee shall receive compensation at the rate of one and one-half (1½) times the employee's regular hourly rate for each hour actually worked.
  2. In no case shall an employee who is required to work on a holiday receive compensation for less than eight (8) hours.
- F. If any of the above holidays falls on an employee's regularly scheduled work day, and the employee works said day, the employee shall be paid holiday pay at the employee's regular hourly rate for eight (8) hours for such holiday.

1. In addition, the employee shall receive compensation at the rate of one and one-half (1½) times the employee's regular hourly rate for eight (8) hours.
- G. If any of the above holidays fall on an employee's regularly scheduled work day, and the employee does not work said day through the utilization of sick, vacation, or other paid leave, the employee shall be paid holiday pay at the employee's regular hourly rate for eight (8) hours for such holiday.
1. In addition, the employee shall receive compensation for the employee's sick, vacation, or other paid leave time that is utilized by the employee.
- H. Holiday pay as set forth in this section shall not be applicable to an employee's Floating Holiday.
1. Floating holidays shall be taken at the employee's discretion, so long such does not unduly disrupt the operations of the City, and shall be paid at the employee's regular hourly rate for eight (8) hours.
  2. Floating Holidays not utilized by December 31 of each year shall be considered forfeited by the employee.
- I. For Fire Department personnel working twenty-four (24) hour shifts, the above holidays shall be defined as starting at 8:00 a.m. on the day of the holiday and ending at 8:00 a.m. the following day.
- J. For Fire Department personnel working twenty-four (24) hour shifts, if any of the above holidays fall on an employee's regularly scheduled day off, the employee shall be paid holiday pay at the employee's regular hourly rate of pay for twenty-four (24) hours for said day.
- K. For Fire Department personnel working twenty-four (24) hour shifts, if an employee not regularly scheduled to work, works on a holiday, the employee shall be paid holiday pay at the employee's regular hourly rate of pay for twenty-four (24) hours.
1. In addition, the employee's shall receive compensation at the rate of one and one-half (1½) times the employee's regular hourly rate for twenty-four (24) hours for such holiday.
  2. In no case shall an employee who is not regularly scheduled to work on a holiday, and works on a holiday, receive compensation for less than twenty-four (24) hours.
  3. Holiday hours worked shall not be excluded from regular hours worked for purposes of calculating FLSA.
- L. For Fire Department personnel working twenty-four (24) hour shifts, if any of the above holidays falls on an employee's regularly scheduled work day, the employee shall be paid at the employee's regular hourly rate of pay for twenty-four (24) hours.
1. In addition, the employee's shall receive compensation at the rate of one and one-half (1½) times the employee's regular hourly rate for twenty-four (24) hours for such holiday.
  2. Holiday hours worked shall not be excluded from regular hours worked for purposes of calculating FLSA.
- M. For Fire Department personnel working twenty-four (24) hour shifts, if any of the above holidays fall on a regularly scheduled work day, and the employee does not work said day through the utilization of sick, vacation, or other paid leave, the employee shall be paid holiday pay at the employee's regular hourly rate of pay for twenty-four (24) hours.
1. In addition, the employee shall receive compensation for the employee's sick, vacation, or other paid leave time that is utilized by the employee.
- N. For Fire Department personnel working twenty-four (24) hour shifts, holiday pay as set forth in this section shall not be applicable to an employee's Floating Holiday.

1. Floating holidays shall be taken at the employee's discretion, so long such does not unduly disrupt the operations of the City, and shall be paid at the employee's regular hourly rate for twenty-four (24) hours.
2. Floating Holidays not utilized by December 31 of each year shall be considered forfeited by the employee.

## CHAPTER 20

### MEDICAL INSURANCE, LIFE INSURANCE & RETIREMENT BENEFITS

#### 20.01 Medical Insurance

- A. City employees are provided group medical, dental, and vision insurance coverage through the Nogales Employee Benefit Trust (Trust).
  - 1. The Trust is comprised of City employees, and is responsible for establishing the conditions, cost, and scope of the insurance coverage provided.
  - 2. The Trust plan documents for each provided benefit set forth the specific scope and coverage available and the applicable costs, conditions and requirements.
- B. The City contributes toward the cost of such coverage, under the terms and conditions as determined by City, in accordance with state and federal law, to be financially feasible and in the City's best interests.

#### 20.02 Life Insurance

- A. City employees during the tenure of their employment are provided, without cost, term life insurance.
- B. The coverage amounts provided are subject to the discretion of the City, as determined by the City to be financially feasible and in the City's best interests. Additional and increased coverage may be available at the employee's sole option and cost.

#### 20.03 COBRA

Employees shall have the right to continued group medical and dental coverage in accordance with the Consolidated Omnibus Budget Reconciliation Act of 1987 (COBRA), or other applicable legal requirement.

#### 20.04 Retirement Plans

- A. The City provides retirement plans under the Arizona State Retirement System (ASRS) or the Arizona Public Safety Personnel Retirement System (PSPRS).
  - 1. The applicable coverage, benefits, costs, and scope of each plan are as set forth in applicable Arizona law.

#### 20.05 Retiree Medical Insurance

- A. Retirees of the City may continue their medical benefits and coverage, and that of their eligible dependents, upon retirement under a qualified Arizona retirement plan (Arizona State Retirement System (ASRS) or Public Safety Personnel Retirement System (PSPRS)) provided the retiree is eligible for coverage under Trust plan documents of the Nogales Employee Benefit Trust.
- B. The City may contribute toward the cost of retiree coverage, under the terms and conditions as determined by the City, in accordance with state and federal law, to be financially feasible and in the City's best interests.

#### 20.06 Employee NOT Medicare eligible

- A. If the retiree is eligible for continued coverage under Trust plan documents and has been employed by the City for twenty (20) or more years, the City shall:
  - 1. Pay 100% of the premium applicable to the retiree's coverage.

- a. Pay 75% of the premium applicable to the retiree's dependent coverage.
  - b. The retiree shall pay 25% of the premium applicable to the retiree's dependent coverage.
2. Commencing January 1, 2017, the City shall:
- a. Pay 100% of the premium applicable to the retiree's coverage.
  - b. Pay 50% of the premium applicable to the retiree's dependent coverage.
  - c. The retiree shall pay 50% of the premium applicable to the retiree's dependent coverage.
3. Commencing January 1, 2018, the City shall:
- a. Pay 100% of the premium applicable to the retiree's coverage.
  - b. Pay 25% of the premium applicable to the retiree's dependent coverage.
  - c. The retiree shall pay 75% of the premium applicable to the retiree's dependent coverage.
4. Commencing January 1, 2019, the City shall:
- a. Pay 100% of the premium applicable to the retiree's coverage.
  - b. The retiree shall pay 100% of the premium applicable to the retiree's dependent coverage.
- B. If the retiree is eligible for continued coverage under Trust plan documents and has been employed by the City for the past ten (10) consecutive years but less than twenty (20) years employment, the retiree shall:
- 1. Pay 100% of the premium applicable to the retiree's coverage.
  - 2. Pay 100% of the premium applicable to the retiree's dependent coverage.
- C. City contributions toward the cost of retiree coverage shall terminate if the retiree is eligible to participate in another employer sponsored medical insurance plan.
- D. Once a retiree's coverage under City insurance is terminated for any reason, the retiree shall thereafter be ineligible to receive any City contribution toward the cost of retiree insurance coverage.

**20.07 Retiree Medicare eligible**

- A. Once a retiree becomes Medicare eligible due to age or disability, City contributions toward the cost of retiree City Insurance coverage shall terminate.
- B. City will provide to retiree the following monthly subsidies to be used toward the purchase of medical benefits and coverage:
  - 1. \$75.00 – single retiree coverage
  - 2. \$150.00 – retiree and dependents

## CHAPTER 21

### EDUCATIONAL ASSISTANCE

#### 21.01 Policy

It is the expressed policy of the City to encourage and assist its employees in enhancing their level of education and skills by providing educational assistance in the form of reimbursement of tuition and class costs.

#### 21.02 Requirements For Assistance

- A. Employees are eligible for educational assistance if:
  - 1. They are regular full-time permanent employees
  - 2. They have completed three (3) years of service with the City.
  - 3. The courses, classes or programs eligible for assistance are offered by accredited institutions of learning.
  - 4. The courses or classes are requisite to an Associate's or Bachelor's Degree, or courses or classes related to the employee's position.
  - 5. The educational assistance requested is not covered or reimbursable from any other educational grant or aid.
- B. Educational assistance is limited to the attainment of one (1) Associate's or Bachelor's Degree.
- C. Post-graduate (post Bachelor's degree) courses or classes are not eligible for educational assistance unless related to employee's current position.

#### 21.03 Procedure

- A. To receive educational assistance, an employee must submit a written request to the department director.
  - 1. The department director will then forward the request to the City Manager and the Human Resources Director.
- B. Request for educational assistance must be made no sooner than March 1<sup>st</sup> and no later than April 1<sup>st</sup> before the commencement of the City's fiscal year in which the educational assistance will be utilized.
- C. The request for educational assistance shall identify the accredited institution the employee intends to attend, and include an itemized estimate of the amount of educational assistance the employee will require.
- D. The requested educational assistance shall be included in the annual fiscal budget presented to the City Council.

#### 21.04 Reimbursement

- A. Reimbursement of tuition and class costs shall be provided for all courses, classes, or programs in which the employee receives grades of "C" or better or passing for a "pass/fail" class.
  - 1. Upon completion of the course, the employee shall submit to the Human Resources Director a certified transcript of the grade(s) received.



- a. The Human Resources Director shall, on behalf of the employee, forward a memo and the appropriate documentation to the finance department for reimbursement.
- B. Employees who take courses at the specific request or direction of their department director shall be reimbursed for all costs in advance.
- C. An employee who is terminated from employment while enrolled in class because of a reduction in force or abolition of a position, or who is unable to complete the course because of a transfer within the City service, shall be reimbursed the full amount of the costs incurred.
  1. An employee, who voluntarily leaves the City or is terminated for cause prior to completing a course, shall not be reimbursed.
- D. Reimbursement for tuition and/or costs shall not exceed the amount requested pursuant to §21.03(c) above, and in no event exceed the amount of four thousand dollars (\$4,000.00) per fiscal year.

**21.05 Non-Utilization of educational assistance.**

An employee who requests educational assistance hereunder, and who without good cause does not utilize the requested assistance, shall be precluded from applying for or receiving educational assistance the following fiscal year.

## CHAPTER 22

### RESIGNATIONS / RETIREMENT & DISMISSALS

#### 22.01 Resignation/Retirement

- A. An employee who desires to retire from City employment shall submit a written notice to the department director or City Manager no less than thirty (30) working days prior to the effective date of retirement.
- B. An employee who desires to resign from City service shall submit a written notice of resignation to the department director or City Manager no less than two (2) weeks prior to the effective date of resignation.
- C. The department director shall forward one (1) copy of the notice of resignation or retirement to the Human Resources Director.
- D. A notice of resignation shall be considered accepted when submitted, and may only be withdrawn with the approval of the department director or City Manager.

#### 22.02 Dismissal

Dismissal is the involuntary termination of an employee from City employment for disciplinary reasons.

#### 22.03 Non-Disciplinary Dismissal

- A. Non-disciplinary dismissal is the involuntary termination of an employee from City employment for non-disciplinary reasons.
- B. Employees who can no longer perform their job duties as set forth in their job description may be subject to non-disciplinary dismissal.
- C. Notice of Non-Disciplinary Dismissal shall be provided as set forth in Chapter 26.

## CHAPTER 23

### LAYOFF & RECALL

#### 23.01 Layoffs

- A. An employee may be laid off from employment for the following:
  - 1. Lack of funding.
  - 2. Elimination of a position.
- B. When a layoff is deemed necessary by the City Manager, the City Manager will notify the Human Resources Director who will establish, after consultation with the City Manager, the order of layoff for as many employees as are to be laid off.
  - 1. Prior to laying off employees, a reasonable attempt shall be made by the City to place affected employees in existing vacancies in the affected department or elsewhere within the City.
- C. In the event that a layoff is necessary, affected employees will be notified in writing by the Human Resources Director at least fifteen (15) calendar days prior to layoff.
- D. The provisions contained in these Rules relating to grievances (Chapter 25) and Appeals (Chapter 28) shall not apply to layoffs except for cases of alleged illegal layoffs in violation of Chapter 11 or Chapter 13.

#### 23.02 Order of Layoff

- A. The order of layoff will be determined by the following:
  - 1. No full-time employee will be laid off while there are employees holding probationary, temporary or part-time, positions in the affected department that an affected regular employee is qualified and available for reassignment or transfer.
  - 2. The order of layoff shall be based on the seniority of individuals in the affected department, with the least senior employee being laid off first.
    - a. In the event affected employees have the same seniority, employees with the best skills, qualifications and abilities will be retained.
    - b. Seniority will be based on an employee's employment hire date and continuous service with the City.

#### 23.03 Layoff Recall Procedure

- A. The Human Resources Director will develop a recall list and notify the employees on this list, in writing, should post-layoff positions become available.
  - 1. The order of recall shall be based on the seniority of the employees laid off, with the most senior employee being recalled first.
  - 2. In the event affected employees have the same seniority, the employee with the best skills, qualifications and abilities will be recalled first.
  - 3. Only employees who were in full-time positions at the time of work force reduction are eligible for recall.

- B. An employee's inclusion on the recall list shall be for a period of one (1) year from the employee's layoff date.
  - 1. The names of employees who are notified and do not accept employment within five (5) working days shall be moved to the bottom of the recall list.

## CHAPTER 24

### STANDARD OF CONDUCT, RESPONSIBILITIES & OBLIGATIONS

#### 24.01 Conduct, Responsibilities and Obligations

A. Employees shall comply with the following duties and obligations:

1. Employees shall not use or attempt to use any political pressure, threats, or bribery to secure an advantage, special treatment, or protection in connection with their employment.
2. Employees shall competently and ably perform their job duties.
3. Employees shall not be insubordinate, and shall comply with all legally authorized work related directives issued by the City.
4. Employees shall in all their dealings with their fellow employees and members of the public be truthful and honest.
5. Employees shall not threaten, coerce, or intimidate a fellow employee or member of the public.
6. Employees shall not use foul, profane, vulgar or abusive language.
7. Employees shall in all their dealings with and towards their fellow employees and members of the public, be respectful and courteous.
8. Employees shall address others by use of proper names; the use of descriptive names or nicknames is prohibited.
9. Employees shall not engage in any type of gossip or rumor mongering.
10. Employees shall not engage in any type of hazing, initiations, horseplay, physical rough housing or any other like type of juvenile behavior.
11. Employees shall not directly or indirectly use or allow the use of City property, of any kind, whether owned, leased, loaned or otherwise, for anything other than City business or activities.
12. Employees shall not intentionally or negligently damage, misuse, or abuse City property.
13. Employees shall timely report for work as scheduled.
14. Employees shall accurately and completely report all of their work and leave time.
15. Employees shall not commit theft of any City property or services.
16. Employees shall not falsify, or misuse City records.
17. Employees shall not use or disclose City records without proper authority.
18. Employees shall follow and maintain safe work habits and actions.
19. Employees shall follow directions, cooperate, and answer all questions of City in connection with any legally authorized administrative investigation relating to job duties or performance.

20. Employees shall submit to medical examination, at City expense, by physicians designated by the City as reasonably required by City.
21. Employees shall not commit or be convicted of a felony criminal offense involving felony homicide, felony assault, felony kidnapping, felony sexual offense, felony robbery, or felony drug trafficking.
22. Employees shall not commit or be convicted of any felony criminal offense, not specified above, which prevents the employee's ability to perform the duties of the employees position.
23. Employees shall not commit or be convicted of any misdemeanor criminal offense which prevents the employees ability to perform the duties of the employee's position.
24. Employees shall maintain current all qualifications, licenses, or certifications required of their job and/or job descriptions.
25. Employees shall comply with all City or departmental written policies, rules, regulations, administrative directives and/or procedures.

#### **24.02 Discipline**

- A. Violation of any of the duties or obligations listed in §24.01 above is subject to the imposition of appropriate discipline in accordance with §26.01.
- B. Notwithstanding the stated general policy of the imposition of progressive and cumulative discipline (§26.01), conduct involving the theft, false reporting of work time, or unauthorized use of City property or City services is considered especially serious and subject to more immediate severe disciplinary action.

## CHAPTER 25

### GRIEVANCES

#### 25.01 Policy

- A. The City supports the fair and equitable treatment of its employees.
  - 1. The City provides a grievance procedure to review employee complaints regarding the administration of minor disciplinary actions, the application of City or departmental policy, rules and regulations, and other matters concerning working conditions or employee rights.
- B. Employee grievances can develop through misunderstanding, lack of information, or actions perceived to be unfair.
  - 1. Resolution is preferable at the supervisory or departmental level where a supervisor or department director can correct or clarify any misunderstanding, provide the necessary information, or explain the necessity for certain actions.
- C. The City recognizes the importance of helping the parties to a grievance come to an equitable resolution of the issues.
  - 1. A process of alternative dispute resolution, wherein the parties get a chance to express their views and explore avenues of understanding, agreement and resolution through confidential facilitated mediation is encouraged.

#### 25.02 Non-Grievable Reserved Management Rights

- A. The management and administration of the City is reserved exclusively to the City. The reserved management rights of the City are **not** subject to review through the filing of a grievance pursuant to these Rules. The reserved management rights of the City include, **but are not limited to**:
  - 1. To determine the purpose of each of its departments, to exercise control and discretion over the organization and efficiency of operations of the City; to set standards for services to be provided to the public;
  - 2. To direct the employees of the City; to establish salaries and compensations; to examine and hire, transfer and assign work in accordance with these Rules;
  - 3. To increase, reduce, change, modify or alter the composition and size of the work force, including the right to relieve employees from duties because of lack of work, funds, or a material change in the duties or organization of a department;
  - 4. To determine the location, methods, means and personnel by which operations are to be conducted, including the right to determine whether goods or services are to be made or purchased;
  - 5. To create and establish City policies, rules, regulations, laws, or administrative directives in accordance with these Rules;
  - 6. To establish, modify, combine or abolish job positions in accordance with these Rules; and,
  - 7. To change or eliminate existing work procedures, equipment, or facilities.

**B. Examples of Non-Grievable Issues include:**

1. An incident or issue subject to those management rights which are necessary to exercise control and discretion over the organization and efficiency of the operations of the City
2. Content or structure of classification or pay plans, benefit programs, or compensation of specific or individual positions
3. Extension of a probationary period
4. Matters involving City finance or budgeting issues
5. Administrative leaves
6. Demotions
7. Dismissals
8. Non-disciplinary actions, i.e. letters of instruction/counseling, etc.

**25.03 Grievable Issues**

**A. To be reviewable, a grievance must:**

1. Concern matters or specific incidents that have occurred.
2. Arise out of a specific situation or act, which has resulted in an inequity or damage to the employee.
3. Arise out of the application, operation, or alleged violation of these Rules, City contract, City administrative directive, decision, or a City policy or regulation, not involving a reserved management right.

**B. Examples of grievable issues include:**

1. Written reprimands,
2. Suspensions of employment without pay,
3. Employee Performance Evaluations.
4. Violation of these Rules, City directives, policies or regulations.

**25.04 General**

**A. Grievances may be initiated by an employee affected.**

1. Grievances may also be filed by a labor organization on behalf of its members in matters that affect more than one member.

**B. No grievance may be pursued without an employee's consent.**

**C. It shall be the duty and responsibility of both the City and employee to process grievances at each successive step of the grievance procedure.**

**D. It shall be the objective of both the City and employee to settle grievances at the lowest step of the procedure.**



- E. The City and employees agree to assist each other in the investigation of the circumstances surrounding and related to any grievance.
- F. Employees and City must comply with the time limits set forth in these Rules.
  - 1. If an employee fails to comply with the time limits, it shall constitute an abandonment of the grievance.
  - 2. If the City does not comply with the time limits, the grievance shall proceed to the next step of the grievance procedure.
- G. Any grievance shall be considered resolved at the completion of any step if all parties are satisfied or if one of the parties concerned chooses not to present the matter to the next step of the procedure within the prescribed period of time.
- H. Once a grievance has been investigated and decided, repeated filing of grievances on the same issue will not be permitted.
- I. The employee may designate a representative at any step of the grievance procedure.
- J. Grievances will be handled during regularly scheduled working days and hours of the parties involved to the extent possible.
- K. If the grievance involves a group of employees, or if a number of employees file separate grievances on the same matter, the grievances may be handled as a single grievance.
- L. Following completion of the grievances process, department directors and supervisors shall ensure the employee does not experience any retaliation for having pursued the grievance.
- M. Any decision and/or directive made in connection with a grievance is to be implemented as quickly as possible.

#### **25.05 Grievance Procedure and Mediation**

- A. An employee who has a problem or complaint should first try to resolve it informally through discussion with the employee's immediate supervisor.
  - 1. If, after this discussion, the employee does not believe the problem has been satisfactorily resolved, the employee may discuss it with the department director.
  - 2. Every effort should be made to find an acceptable solution by informal means at the lowest possible level of supervision.
- B. At any time, prior or during, the grievance process or disciplinary process (Chapter 25), and both City and employee are in agreement, the matter may be referred to mediation under the facilitation of a mediator mutually agreeable to City and employee.
  - 1. The terms and conditions of the mediation shall be as mutually agreed to by the parties.
  - 2. Issues resolved through the mediation process will be dropped from the grievance or disciplinary process.
  - 3. Unresolved issues may then be submitted to a formal grievance or disciplinary process.
- C. The time spend in seeking resolution through mediation shall serve to modify and extend the time limits set forth in Chapters 25, 26, 27, or 28.
  - 1. Such modifications and extensions shall be in writing.

D. No inference will be made for or against the City or employees who elect to use or not use the mediation process.

**25.06 Grievance Form**

A. Grievances shall be in writing, signed by the employee, and shall include the following information:

1. The name(s) of the employee.
2. A clear and concise statement of the grievance and the facts upon which it is based.
3. The specific section(s) of these Rules, City contract, administrative directives, City decisions, City or departmental policy or regulation, relied upon or claimed to have been violated.
4. The remedy or correction sought.

**25.07 Grievance Response Form:**

A. The response to a grievance shall be in writing, signed by the department director or City Manager, and shall include the following information:

1. A clear and concise response to the grievance and the facts upon which it is based;
2. The specific section(s) of the Rules, City contract, administrative directives, City or departmental policy or regulations which apply to the grievance and upon which the decision is based; and
3. Denial or acceptance of the employee's proposed remedy or presentation of an alternative remedy.

**25.08 Grievance Filing Procedure**

A. Formal grievances shall be processed in accordance with the following procedure:

1. Step 1:
  - a. Grievances shall be filed with the department director within twenty (20) working days following the occurrence of the act or incident giving rise to the grievance, or within twenty (20) working days following the date upon which the facts of the grievance should have reasonably become known.
  - b. Within five (5) working days of receipt of the grievance, the department director, the employee and/or the employee representative, shall meet to resolve the grievance.
  - c. Within five (5) working days of the meeting, the department director shall, respond to the grievance.
  - d. If the employee is not in agreement with the department directors' decision, the employee may proceed to Step 2.
2. Step 2:
  - a. Within five (5) working days following receipt of the department director's decision, the employee may appeal to the City Manager.
  - b. The appeal shall be filed with the City Manager.

- c. Within five (5) working days of the receipt of the appeal, the City Manager or designee, the employee and/or the employee representatives, if requested by employee, shall meet with the City Manager to resolve the grievance.
  - d. Within five (5) working days of the meeting, or the receipt of the appeal, whichever is longer, the City Manager shall respond, to the grievance.
  - e. If the employee is not in agreement with the City Managers decision the employee may proceed to Step 3.
3. Step 3:
- a. The employee may appeal the City Managers decision to the Grievance Board pursuant to Chapter 27.

**25.09 Grievances by Department Directors**

- A. Department directors and any other employee under the direct supervision of the City Manager shall process grievances in accordance with the following procedure.
- 1. Step 1:
    - a. Grievance shall be filed with the City Manager within twenty (20) working days following the occurrence of the act or incident giving rise to the grievance, or within twenty (20) working days following the date upon which the facts of the grievance should have reasonably become known.
    - b. Within five (5) working days of receipt of the grievance, the City Manager and the department director / other employee shall meet to resolve the grievance.
    - c. Within five (5) working days of the meeting, the City Manager shall respond to the grievance.
    - d. If the department director / other employee is not in agreement with the City Managers decision, the department director / other employee may proceed to Step 2.
  - 2. Step 2:
    - a. The department director / other employee may appeal the City Managers decision to the Grievance Board pursuant to Chapter 27.

**25.10 Service of Grievances and Responses**

- A. Grievances and responses shall be personally served on the department director, City Manager, or employee, as may be applicable.
- 1. Copies shall be provided to the Human Resources Director and the City Attorney.
- B. Notice shall be deemed complete upon personal service.

**25.11 Extension of Time Limits**

- A. By mutual agreement, the parties may modify and extend the time limits set forth above
- 1. Such modifications and/or extensions shall be in writing.

## CHAPTER 26

### DISCIPLINE

#### 26.01 General Policy

- A. Disciplinary actions, other than dismissals for cause, are considered to be corrective actions which serve to notify employees of improper conduct or performance in such a manner as to avoid repetition of such conduct or performance in the future. The degree of disciplinary action shall relate to the gravity of the improper performance or conduct and/or the past performance and conduct of the employee. **Generally, disciplinary actions should be progressive and cumulative. Disciplinary measures should begin with less severe action and become increasingly more severe for additional offenses. Improper performance or conduct of an especially serious nature may require more immediate severe disciplinary action up to and including dismissal.**
- B. Whenever practical, informal supervisory actions to improve conduct and performance should be used before taking more severe, formal disciplinary action.
- C. It is the express policy of the City that disciplinary actions be imposed in a fair and consistent manner.
- D. Employees may be disciplined or dismissed **only** as provided in the Rules. Authorized and permissible disciplinary actions under these rules shall consist only of the following:
  - 1. Written reprimands
  - 2. Suspension of employment without pay
  - 3. Demotions
  - 4. Dismissal
- E. Authority to impose the employee discipline set forth in §26.01(D) 1, 2, above shall be limited to the City Manager and to respective department directors, or supervisory employees in accordance with adopted written City job descriptions and organizational charts.
- F. Authority to impose the employee discipline set forth in §26.01(A) 3 and 4 is limited to the City Manager and to department directors in accordance with adopted written City job descriptions and organizational charts.
- G. Authority to impose discipline on department directors is limited to the City Manager, or delegated designee in accordance with adopted written City job descriptions and organizational charts.

#### 26.02 Non-Disciplinary Actions

- A. Letters of Instruction / Counseling.
  - 1. A letter of instruction or counseling is intended to advise and/or clarify performance or conduct expected of an employee.
  - 2. The letter of instruction / counseling shall contain:
    - a. The specific conduct or performance of employee at issue
    - b. The rule, policy, or procedure at issue
    - c. The conduct or performance expected of the employee

- d. Letters of instruction / counseling are non-disciplinary actions and shall not be used or cited as prior disciplinary action.
- e. Authority to issue a non-disciplinary letter of instruction / counseling shall be limited to respective department directors, or supervisory employees, in accordance with adopted written City job descriptions and organizational charts.
- f. The provisions in these Rules relating to grievances (Chapter 25) and appeals (Chapter 27) shall not apply to letters of instruction / counseling.

**B. Administrative Leave.**

1. Administrative leave with pay may be given to an employee by a department director under the following circumstances:
  - a. In cases where an employee is charged with a felony or other crime, which adversely affects the employee's suitability or ability to continue to adequately perform the essential functions of the employee's position, or
  - b. Where it is deemed to be in the best interest of the City while an inquiry is being made into the conduct of the employee and/or the employee's continued suitability for employment.
2. A department director may initially place an employee on administrative leave for up to thirty (30) working days.
  - a. For leave beyond thirty (30) working days the department director must obtain the approval of the City Manager.
3. An employee may be placed on administrative leave only upon written notice.
  - a. Such notice shall contain the facts or circumstances giving rise to the action, including the effective date and duration of the suspension.
  - b. Service of such notice shall be as set forth in § 26.08.
4. Administrative leave are non-disciplinary actions and shall not be used or cited as prior disciplinary actions.
5. The provisions in these Rules relating to grievances (Chapter 25) and appeals (Chapter 27) do not apply to administrative leave.

**26.03 Basis for Discipline**

- A. The following acts may constitute cause for disciplinary action up to and including dismissal:
1. False and/or fraudulent job applications.
  2. Violation of these Rules, any City departmental written policies, rule, regulation, administrative directive or procedure.

## **26.04 Determination of Appropriate Discipline**

- A. Discipline **shall** be administered in progressive and cumulative steps so as to seek corrective results in accordance with §26.01. In determining the appropriate disciplinary action, the following, non-inclusive, factors shall be considered:
  - 1. The nature of the employee conduct
  - 2. The extent of the employee conduct
  - 3. The employee's job performance evaluations and record
  - 4. The employee's previous disciplinary record
    - a. Consideration of an employee's previous disciplinary record shall be limited to the proceeding two (2) years.
  - 5. The employee's efforts to improve conduct and/or job performance
  - 6. The actual effect on the operation of the City due to the employee's conduct.
- B. In cases of gross negligence, negligence or repeated negligence resulting in loss or damage to City property, employees may be assessed the cost of loss or damage to the City property.
- C. Appropriate discipline may include requirements and/or conditions that employee undertake appropriate counseling, training and/or instructions.

## **26.05 Types of Disciplinary Actions**

- A. Written Reprimands. In instances of serious or repeated improper performance or conduct, a written reprimand may be issued. The written reprimand shall contain:
  - 1. A description of the improper performance or conduct and supporting evidence.
  - 2. The dates of any prior disciplinary action.
  - 3. The Rule, policy, directive or procedure that was violated by the employee.
  - 4. The actions the employee must take to correct the situation.
  - 5. The measures the supervisor will take to assist the employee in following through with the required corrective actions.
  - 6. The reprimand shall be served on the employee, and a copy shall be forwarded to the Human Resources Director and the City Attorney.
- B. Suspension. In instances of more serious or repeated improper performance or conduct, a suspension may be issued. The suspension shall contain:
  - 1. A description of the improper performance or conduct and supporting evidence.
  - 2. The dates of any prior disciplinary action.
  - 3. The Rule, policy, directive or procedure that was violated by the employee.

4. The actions the employee must take to correct the situation.
  5. The measures the supervisor will take to assist the employee in following through with the required corrective actions.
  6. Suspensions shall be imposed without pay.
  7. The suspension shall be served on the employee, and a copy shall be forwarded to the Human Resources Director and the City Attorney.
  8. An employee while on a suspension without pay shall not accrue any sick or vacation leave, or be entitled to holiday pay.
  9. An employee while on suspension without pay shall not be entitled to use any accrued sick, vacation, or any other leave.
- C. Demotion. In instances of more serious or repeated improper performance or conduct, a demotion may be imposed. The demotion shall contain:
1. A description of the improper performance or conduct and supporting evidence.
  2. The dates of any prior disciplinary action.
  3. The Rule, policy, directive or procedure that was violated by the employee.
  4. The actions the employee must take to correct the situation.
  5. The measures the supervisor will take to assist the employee in following through with the required corrective actions.
  6. The demotion shall be served on the employee, and a copy shall be forwarded to the Human Resources Director and the City Attorney.
- D. Dismissal. In instances of more serious or repeated improper performance or conduct, an employee may be dismissed. The dismissal shall contain:
1. A description of the improper performance or conduct and supporting evidence.
  2. The dates of any prior disciplinary action.
  3. The Rule, policy or procedure that was violated by the employee.
  4. The dismissal shall be served on the employee, and a copy shall be forwarded to the Human Resources Director and the City Attorney.

**26.06 Pre-disciplinary Meeting for Suspension Without Pay, Demotions, or Dismissal**

- A. A pre-disciplinary meeting shall be held before an employee may be suspended without pay, demoted, or dismissed.
1. The pre-disciplinary meeting is intended to allow an employee the opportunity to address the proposed disciplinary action before formal action is taken.
  2. Before the pre-disciplinary hearing, the employee shall be provided:
    - a. Written notice of the proposed disciplinary action.

- b. A description of the improper performance or conduct and supporting evidence.
  - c. The dates of any prior disciplinary action.
  - d. The Rule, policy or procedure that was violated by the employee.
  - e. Date and time of the pre-disciplinary meeting.
  - f. The notice of the proposed disciplinary action shall be forwarded to the Human Resources Director and the City Attorney.
- B. The employee shall be allowed five (5) working days in which to respond, in writing, to the proposed discipline.
- 1. Failure of the employee to respond within the specified time period will result in the employee's waiver of a meeting.
- C. After the pre-disciplinary meeting has concluded, the employee shall be served with a written notice regarding the results of the meeting.

**26.07 Approval of Intent to Demote, Suspend Without Pay or Dismiss**

Whenever it is the intention of the City to suspend an employee without pay, demote or dismiss an employee, the City shall first obtain the written approval of the City Attorney and the City Manager.

**26.08 Service of Non-Disciplinary and Disciplinary Actions**

- A. Notices of proposed, disciplinary or non-disciplinary actions shall be personally served on the employee or sent by certified mailing; with copies to the Human Resources Director and the City Attorney.
- 1. Notice shall be deemed complete upon personal service or upon receipt of the certified mail.

**26.09 Time Limit**

- A. Disciplinary actions shall be commenced and served on the employee no later than forty-five (45) working days from the date of the incident or conduct forming the bases of the disciplinary action is discovered or should have been discovered in the exercise of reasonable diligence.
- 1. Time placed on non-disciplinary administrative leaves with pay, pursuant to §25.08 shall not be counted towards the forty-five (45) working day time limit.

**26.10 Mediation**

At any time, prior or during, the disciplinary process, parties may agree to mediation as set forth in §25.05



## CHAPTER 27

### APPEALS TO GRIEVANCE BOARD

#### 27.01 Right of Appeal

An employee shall have the right to appeal the City Manager's decision regarding the employee's grievance to the Grievance Board.

#### 27.02 Time of Appeal

An employee has ten (10) working days from the service of the notice of the City Manager's decision to file an appeal

#### 27.03 Method of Appeal

- A. Appeals shall be in writing, addressed to and filed with the Human Resources Director and a copy filed with the City Attorney.
  - 1. The Human Resources Director will notify the Grievance Board.
  - 2. The appeal shall specifically identify the basis of the appeal, and should include all previous correspondence concerning the issue.
  - 3. The appeal shall also propose a statement of the remedy sought by the appealing employee and include supporting arguments.

#### 27.04 Grievance Board

- A. The Grievance Board shall be composed of three (3) members of the Appeals Commission established pursuant to §28.04 chosen at random by the Human Resources Director for each Appeal.
  - 1. Two (2) members of the Grievance Board shall constitute a quorum for the transaction of business.
  - 2. The Grievance Board shall hold meetings as needed.

#### 27.05 Role/Duties of Grievance Board

- A. The role of the Grievance Board shall be to review the facts, procedures, and issues related to the appeal.
- B. The Grievance Board shall ensure that all City procedures were followed, and that the employee was treated in a fair and consistent basis, and in accordance with these Rules, City contracts, City administrative directives, policies, and/or regulations.
- C. The Grievance Board may affirm, reverse or modify the decision of the City Manager.

#### 27.06 Grievance Hearing

- A. The Human Resources Director shall schedule a grievance hearing within thirty (30) days of the filing of the employee's notice of appeal.
- B. The Human Resources Director will ensure that the Board has access to all information necessary to conduct its review.

- C. The Grievance Board may request to review personnel files and related personnel records of the employee(s) involved in the grievance.
  - 1. All requests to review an employee personnel file must be submitted to the Human Resources Director.
  - 2. The Human Resources Director in conjunction with the City Attorney shall determine whether or not to allow the request.
- D. The employee shall appear personally and may have a representative and/or legal counsel.
- E. A representative of the Human Resources Director will be present during all Board meetings but will not participate in the Grievance Board's review of the appeal.
  - 1. The Human Resources Director shall also provide all necessary support to the Board.
- F. The employee shall have the right to testify, produce evidence and call and cross examine witnesses.
- G. The City Attorney shall represent the City before the Grievance Board.
- H. City and employee shall have the right to testify, produce evidence, and call and cross examine witnesses at the Grievance Board hearing.
- I. All information obtained by a Grievance Board shall be treated in a confidential manner and shall not be shared with any other employee or individual outside of the grievance process.
  - 1. At the conclusion of a grievance board review, all documents, notes, and files shall immediately be returned to the Human Resources Director.
- J. The Human Resources Director upon application of any party shall request the City Clerk issue subpoenas to compel attendance of any person or produce any books or papers relevant to the appeal issues for an appeal hearing before the Grievance Board.
  - 1. The request for subpoenas shall be based upon a written notice from the employee, employee's attorney, or City Attorney that a witness will be necessary for the hearing.
- K. Any City employee requested to appear at a Grievance Board hearing will be compensated at their regular rate of pay while appearing on duty.
  - 1. Overtime compensation for off-duty testimony will be paid when appropriate under FLSA.
- L. The Grievance Board shall conduct the hearing and rule on any evidence presented.
  - 1. An official record of the hearing, including all testimony and all exhibits shall be made by the City.
    - a. The hearing shall be steno graphically or mechanically recorded.
  - 2. Such record need not be transcribed unless requested by one of the parties and upon payment of the actual cost of transcription.
  - 3. The Grievance Board is not bound by technical rules of evidence prevailing in the Courts and may hear any relevant evidence, including hearsay.
    - a. Notwithstanding the above, if reasonably available, witness testimony shall be presented in person and shall be based on personal knowledge.

4. The Grievance Board shall vote by majority rule and make specific findings of fact.
- M. The City bears the burden of proof, by a preponderance of the evidence, in establishing the propriety of the disciplinary action imposed.
- N. Written findings and the decision of the Grievance Board shall be transmitted to the Human Resources Director and to both parties within ten (10) working days following the conclusion of the hearing.

**27.07 Service of Grievance Board Decisions**

- A. Decisions of the Grievance Board shall be personally served or sent by certified mailing.
  1. Notice shall be deemed complete upon personal service or upon receipt of the certified mail.

**27.08 Extension of Time Limits**

- A. By mutual agreement, the parties may modify and extend the time limits set forth above.
  1. Such modifications and/or extensions shall be in writing.

**27.09 Appeal to Superior Court**

- A. All findings and the decision of the Grievance Board shall be final and shall be subject to judicial appeal by employee as provided in Title 12, Chapter 7, Article 6, Arizona Revised Statutes.
  1. Employees successful in their appeal shall be awarded incurred costs and attorney's fees.

## CHAPTER 28

### APPEALS TO APPEALS COMMISSION

#### 28.01 Right of Appeal

- A. An employee shall have the right to appeal to the Appeals Commission only in the following cases:
  - 1. Demotions
  - 2. Non-disciplinary dismissals
  - 3. Dismissals
- B. No other appeals to the Appeals Commission shall be allowed.

#### 28.02 Time of Appeal

An employee has twenty (20) working days from the service of the notice of the disciplinary action, to file an appeal.

#### 28.03 Method of Appeal

- A. Appeals shall be in writing, addressed to and filed with the Human Resources Director, and a copy filed with the City Attorney.
  - 1. The Human Resources Director will notify the Appeals Commission, the City Manager and the City Attorney.
  - 2. The appeal shall specifically identify the basis of the appeal, and should include all previous correspondence concerning the issue.
  - 3. The appeal shall also propose a statement of the remedy sought by the appealing employee, and include any supporting arguments.

#### 28.04 Appeals Commission

- A. The Appeals Commission shall consist of seven (7) members composed of persons who are not employed by the City and who are not members of any other City bodies or commissions.
- B. Members of the Appeals Commission shall reside within the City limits and shall be appointed by the City Council to serve terms of four (4) years.
  - 1. The terms shall commence from the date of appointment
    - a. Any vacancies shall be filled only for the remainder of the unexpired term.
- C. The Appeals Commission shall hold meetings as needed.
- D. A majority of the Appeals Commission shall constitute a quorum for the transaction of business.

## 28.05 Role/Duties of Appeals Commission

- A. The role of the Appeals Commission shall be to review the facts, and procedures, and issues related to the appeal.
- B. The Appeals Commission shall ensure that all City procedures were followed, and that the employee was treated in a fair and consistent basis, and in accordance with these Rules, City contracts, City administrative directives, policies and/or regulations.
- C. The Appeals Commission may, affirm, reverse or modify the decision of the City.

## 28.06 Appeal Hearing

- A. The Human Resources Director, shall schedule an appeal hearing within thirty (30) days of the filing of the employee's notice of appeal.
- B. The Human Resources Director shall post an agenda for the hearing at the same place of posting for notice of City Council meetings at least twenty-four (24) hours prior to the hearing.
  - 1. The Notice of Hearing shall be posted in the following form:

### NOTICE OF HEARING

**The City of Nogales Appeals Commission will meet (date) at (time) in (place) to hear an employee appeal pursuant to Chapter 28 of the City of Nogales Personnel Policy Manual. The Appeals Commission shall adjourn into executive session pursuant to A.R.S. §38-431.03(A)(1) unless a public hearing has been requested by the employee. A copy of the Personnel Manual is available in the Human Resources Office.**

- 2. The employee must receive at least twenty-four (24) hours advance notice of a scheduled executive session hearing pursuant to A.R.S. §38-431.03 so that the employee may determine whether the hearing should occur in public.
- C. The Human Resources Director will ensure that the Board has access to all information necessary to conduct its review.
- D. The Appeals Commission may request to review personnel files and related personnel records of the employee(s) involved in the grievance.
  - 1. All requests to review an employee personnel file must be submitted to the Human Resources Director.
  - 2. The Human Resources Director in conjunction with the City Attorney shall determine whether or not to allow the request.
- E. The employee shall appear personally and may have a representative and/or legal counsel.
- F. The City and employee shall have the right to testify, produce evidence and call and cross examine witnesses.
- G. A representative of the Human Resources Director will be present during all Appeals Commission meetings but will not participate in the commission's review of the appeal. The Human Resources Director shall also provide all necessary support to the Commission.
- H. The City Attorney shall represent the City before the Appeals Commission.

- I. All information obtained by an Appeals Commission shall be treated in a confidential manner and shall not be shared with any other employee or individual outside of the grievance process.
  - 1. At the conclusion of a grievance board review, all documents, notes, and files shall immediately be returned to the Human Resources Director.
- J. The Human Resources Director upon application of any party shall request the City Clerk issue subpoenas to compel attendance of any person or produce any books or papers relevant to the appeal issues for the appeal hearing before the Appeals Commission. The request for subpoenas shall be based upon a written notice from the employee, employee's attorney, or City Attorney that a witness will be necessary for the hearing.
- K. Any City employee requested to appear at an Appeals Commission hearing will be compensated at their regular rate of pay while appearing on duty.
  - 1. Overtime compensation for off-duty testimony will be paid when appropriate under FLSA.
- L. The Appeals Commission shall conduct the hearing and rule on any evidence presented.
  - 1. An official record of the hearing, including all testimony and all exhibits shall be made by the City.
    - a. The hearing shall be steno graphically or mechanically recorded.
  - 2. Such record need not be transcribed unless requested by one of the parties and upon payment of the actual cost of transcription.
  - 3. The Appeals Commission is not bound by technical rules of evidence prevailing in the Courts and may hear any relevant evidence.
    - a. Notwithstanding the above, if reasonably available, witness testimony shall be presented in person and shall be based on personal knowledge.
  - 4. The Appeals Commission shall vote by majority rule and make specific findings of fact.
- M. The City bears the burden of proof, by clear and convincing evidence, in establishing the propriety of the disciplinary action imposed.
- N. Written findings and the decision of the Appeals Commission shall be transmitted to the Human Resources Director and to both parties within ten (10) working days following the conclusion of the hearing.

#### **28.07 Service of Appeals Commission Decision**

- A. Decisions of the Appeals Commission shall be personally served or sent by certified mailing.
  - 1. Notice shall be deemed complete upon personal service or upon receipt of the certified mail.

#### **28.08 Extension of Time Limits**

- A. By mutual agreement, the parties may modify and extend the time limits set forth above.
  - 1. Such modifications and/or extensions shall be in writing.

## **28.09 Appeal to Superior Court**

A. All findings and the decision of the Appeal Commission shall be final and shall be subject to appeal by employee as provided in Title 12, Chapter 7, Article 6, Arizona Revised Statutes.

1. Employees successful in their appeal shall be awarded incurred costs and attorney's fees.

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RECEIPT FOR PERSONNEL MANUAL

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I acknowledge receipt of the City of Nogales Personnel Manual. I agree and acknowledge that I am responsible for the terms and conditions therein contained.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Routing:**

Forward to Human Resources Department for inclusion in Personnel File