

**City of Rio Communities, New Mexico**  
**ORDINANCE 2022 - xx**

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6 PERSONNEL POLICY MANUAL**

**PASSED, APPROVED AND ADOPTED THIS XX DAY OF XXXX 2022 BY THE GOVERNING BODY OF  
THE CITY OF RIO COMMUNITIES, NEW MEXICO.**

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**The City of Rio Communities**  
**PERSONNEL POLICY MANUAL**

## TABLE OF CONTENTS

<b>SECTION 1</b>	<b>GENERAL PROVISIONS</b>	<b>1</b>
1.1	PURPOSE	1
<b>SECTION 2</b>	<b>SCOPE AND PRONOUNS</b>	<b>1</b>
2.1	Scope	1
2.2	Pronouns	1
<b>SECTION 3</b>	<b>APPLIICABILITY</b>	<b>1</b>
3.1		1
<b>SECTION 4</b>	<b>RECRUITMENT AND SELECTION</b>	<b>2</b>
4.1	PURPOSE and POLICY	2
4.2	PROCEDURES	2
4.3	APPLICANTION	2
4.4	NON-DISCRIMINATION	3
4.5	BASIS FOR FINAL SELECTION	3
4.6	COMPENSATION	4
4.7	INELIGIBILITY FOR LAW ENFORCEMENT POSITIONS	4
4.8	EMPLOYMENT OF RELATIVES/FAMILY MEMBERS (Nepotism)	4
<b>SECTION 5</b>	<b>EMPLOYMENT CATEGORIES AND PROBATIONARY PERIODS</b>	<b>4</b>
5.1	CATEGORIES	4
5.2	PROBATIONARY PERIOD PURPOSE	5
5.3	PROBATIONARY PERIOD CONSIDERATIONS AND PROCEDURES	5
5.4	PROMOTIONAL PROBATIONARY PERIOD	6
5.5	PERFORMANCE REASSIGNMENT PROBATIONARY PERIOD	7
<b>SECTION 6</b>	<b>JOB CLASSIFICATION AND PAY PLAN</b>	<b>7</b>
6.1	JOB CLASSIFICATION PURPOSE	7
6.2	JOB DESCRIPTIONS	7
6.3	POSITION CLASSIFICATION STUDIES	7
6.4	PAY PLAN PURPOSE	7
6.5	PAY PLAN PROVISIONS	7
6.6	PAY RANGES	8
<b>SECTION 7</b>	<b>PERFORMANCE EVALUATION</b>	<b>8</b>
7.1	PURPOSE	8
7.2	BASIC POLICY	8
7.3	PERFORMANCE EVALUATION PROCEDURES	8

<b>SECTION 8</b>	<b>CONDITIONS OF EMPLOYMENT</b>	<b>9</b>
8.1	HOURS OF WORK	9
8.2	ATTENDANCE AND ABSENTEEISM	9
8.3	DRESS AND PERSONAL APPEARANCE	9
8.4	PAY PERIODS	9
8.5	TIME TRACKING	9
8.6	PAYROLL DEDUCTIONS	10
8.7	FINAL PAY CHECK	10
8.8	TRANSFERS	10
8.9	RESIGNATIONS	10
8.10	REDUCTIONS IN FORCE	10
8.11	OUTSIDE EMPLOYMENT	12
<b>SECTION 9</b>	<b>LEAVE</b>	<b>12</b>
9.1	VACATION	12
9.2	HOLIDAYS	13
9.3	PERSONAL LEAVE DAY	13
9.4	SICK LEAVE	13
9.5	DONATED LEAVE	14
9.6	FAMILY and MEDICAL LEAVE of ABSENSE	17
9.7	GROUP HEALTH PLAN COVERAGE	21
9.8	OTHER BENEFITS	22
9.9	NO RETALIATION	22
9.10	RIGHTS and OBLIGATION of EMPLOYEES	22
9.11	LEAVE WITHOUT PAY	22
9.12	BEREAVEMENT LEAVE	23
9.13	MILITARY LEAVE	23
9.14	JURY DUTY	24
9.15	VOTING LEAVE	24
9.16	DOMESTIC ABUSE of SEXUAL VIOLENCE LEAVE (DASV)	24
9.17	NURSING MOTHER's LEAVE	25
<b>SECTION 10</b>	<b>OVERTIME AND COMP TIME</b>	<b>25</b>
<b>SECTION 11</b>	<b>POLITICAL ACTIVITY</b>	<b>26</b>
<b>SECTION 12</b>	<b>GRATUATIES – SOLICITATION</b>	<b>27</b>
12.1	GRATUATIES	27
12.2	SOLICITATION	27
<b>SECTION 13</b>	<b>RULES OF EMPLOYEE CONDUCT AND DISCIPLINARY ACTION</b>	<b>27</b>
13.1	RULES OF EMPLOYEE CONDUCT	27

13.2	JUST CAUSE FOR DISCIPLINARY ACTION	29
13.3	PROGRESSIVE DISCIPLINE	29
13.4	DOCUMENTATION	29
13.5	RANGE OF COUNSELING AND DISCIPLINE	29
13.6	NOTICE OF INTENT TO DISCIPLINE	31
13.8	PRE-DISCIPLINARY MEETING AND NOTICE OF FINAL ACTION	31
13.8	ADMINISTRATIVE LEAVE WITH PAY PENDING INVESTIGATION AND/OR DISCIPLINARY PROCEEDING	32
13.9	GRIEVANCE PROCEDURE	33
13.10	POST-DISCIPLINE APPEAL	34
<b>SECTION 14: EQUAL EMPLOYMENT OPPORTUNITY</b>		<b>37</b>
14.1	STATEMENT OF PURPOSE	37
14.2	REASONABLE ACCOMMODATIONS	37
14.3	DISCRIMINATION AND/OR RETALIATION PROHIBITED	38
14.4	MANAGEMENT RESPONSIBILITY	38
14.5	APPLICANT COMPLAINTS	39
14.6	COMMUNICATION	39
<b>SECTION 15: DISCRIMINATION AND HARASSMENT PREVENTATION</b>		<b>39</b>
15.1	STATEMENT OF PURPOSE	39
15.2	SCOPE	39
15.3	DEFINITIONS	40
15.4	REPORTING REQUIREMENTS	40
15.5	INVESTIGATION AND FINDINGS	41
15.6	RETALIATION PROHIBITED	41
<b>SECTION 16: OFF-DUTY USE OF CANNABIS BY NON-SAFETY SENSITIVE POSITIONS OR FEDERALLY MANDATED EMPLOYEES NOT PROHIBITED; EXCEPTION FOR MEDICAL CANNABIS</b>		<b>41</b>
16.1	DRUG AND ALCOHOL ABUSE POLICY	41
16.2	SALE, USE AND POSSESSION OF DRUGS	42
16.3	EMPLOYEE COOPERATION	42
16.4	CALL BACK DUTY	42
16.5	EMPLOYEE CATEGORIES	43
16.6	DRUG TESTING	43
16.7	CATEGORIES FOR DRUG AND/OR ALCOHOL TESTING	44
16.8	POSITIVE TEST RESULTS	46
16.9	VOLUNTARY SELF-REFERRAL	47
<b>SECTION 17 GENERAL PROVISIONS</b>		<b>48</b>
17.1	STATEMENT OF PURPOSE	48

<b>SECTION 18: ON-CALL REQUIREMENTS AND CALL-BACK PAY</b>	<b>49</b>
18.1 ON-CALL (STANDBY) STATUS	49
18.2 CALL-BACK PAY	50
<b>SECTION 19: ON-THE JOB INJURY OR ILLNESS/WORKERS' COMPENSATION</b>	<b>50</b>
19.1 ON-THE-JOB INJURY OR ILLNESS	50
19.2 WORKERS' COMPENSATION PROCESS	50
<b>SECTION 20: CONFLICT OF INTEREST</b>	<b>51</b>

## SECTION 1. GENERAL PROVISIONS

- 1.1 Purpose.** The purpose of this Personnel Policy Manual is to establish policies and procedures in order to ensure, insofar as possible, uniform treatment and administration of personnel employed by the City of Rio Communities. This manual not only outlines the policies applicable to the various phases of employment, but it also indicates how policy is to be administered. These policies also aid in achieving fair and equitable interpretations of policy which require personnel action on a regular recurring basis. Moreover, it is our intent that all employees have a deeper understanding of their role in the organization.

The City of Rio Communities is committed to providing equal opportunities for all persons making application for employment and for equity in treatment and advancement opportunities for our employees. The importance of each employee's contribution cannot be overstated. It is the City's goal to provide residents with the finest and most efficient service possible.

## SECTION 2 SCOPE AND PRONOUNS

- 2.1 Scope.** The policies outlined in this manual should be regarded as guidelines only, which may be amended from time to time. This manual shall not be amended by any future departmental procedures, directives, general orders and/or oral representations in order to provide uniform policies for all City employees. Only the City of Rio Communities Governing Body has the right to add to, delete from, or modify this manual at any time, in its sole discretion.
- 2.2 Pronouns.** The City of Rio Communities recognizes and respects that name and gender identity are central to most individuals' sense of self and well-being. For purposes of this manual, the use of the pronouns he/him/his are used only for simplicity and brevity and shall be deemed to refer to the masculine, feminine, neutral, singular or plural as the identity of the person or persons referred to may require.

## SECTION 3 APPLICABILITY

- 3.1** All positions in the service of the City of Rio Communities are covered under the provisions of this manual and the rules proclaimed under this chapter, except as follows:
- A.** Elected officials or those appointed to fill vacancies in elected offices;
  - B.** Members of the City boards and commissions who are not employees;
  - C.** Appointed municipal officials and their deputies, including but not limited to, the City Manager, Finance Officer/Treasurer, Municipal Clerk, Police Chief, Fire Chief, City Attorney and other Department Heads to the extent that their employment contract specifies terms that differ from this policy.

- D. Independent contractors;
- E. Temporary employees and employees working less than twenty hours per week;  
and
- F. Professional consultants.

## SECTION 4 RECRUITMENT AND SELECTION

**4.1 Purpose and Policy.** It shall be the policy of the City to recruit, select and promote employees on the basis of knowledge, skills, and abilities regarding their jobs, regardless of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, pregnancy, political affiliation, physical or mental handicap, or any other legally protected status.

### 4.2 Procedures

1. When a position becomes vacant or whenever a new position is to be created, the City Manager or designee will post the vacancy internally for a minimum of 5 workdays. The notice of vacancy will be posted in the City Offices and e-mailed to all employees.
2. If there are no qualified internal applicants, the City Manager or designee will post the vacancy externally. The external notice of vacancy shall be distributed and posted in the City Offices, on the City website and on other bulletin boards in local centers and community buildings. This form shall be posted for a minimum period of five working days before filling the vacancy or new position. If appropriate, advertisement of a job vacancy may be made in employment agencies, trade journals or the appropriate news media. Casual labor can temporarily fill any vacancy.

### 4.3 Application

1. Application Procedure. Each applicant for employment with the City shall obtain the required form and fill it out completely. Any false statement made on the application shall be grounds for rejection or automatic dismissal from employment.
2. Application Retention. Applications shall be accepted only for vacant positions.
3. General Requirements. Evidence of job performance and capability, experience, education, training, skills, and other abilities shall be carefully considered in evaluating the qualifications of applicants.
4. Basic Qualifications. Basic qualifications and other criteria for employment shall be contained in the job description for each position. Qualifications and criteria



for employment shall include minimum requirements for training, education, skills and experience relating particularly to that individual position.

5. Testing. Performance or other tests may be required by the City to ascertain competency for the position. Mastery of standards for operations may be required.
6. Interview. Selection shall be made by the City Manager in consultation with all department heads and will be based on the following: skills, educational background, experience, personal interview, references, and results of pre-employment examinations when required.

The City Manager/Department Head will convene a committee of no less than 3 appropriate staff and/or community members. The City Manager and/or Department Head will chair this committee. The committee will review the applications according to an established criterion and select those to be interviewed. The committee will develop the questions, point system, and implement the interview process. References will be called for the top 2 applicants.

#### **4.4 Non-Discrimination**

1. The City is an equal opportunity employer.
  - a. The City does not discriminate on the basis of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, pregnancy, political affiliation, physical or mental handicap, or any other legally protected status; and
  - b. The City does not grant special favors to any employee or group of employees.
2. Individuals will be considered for appointment on the basis of bona-fide occupational qualifications only.

**4.5 Basis for Final Selection.** Approval of the final selection for a position will be made by The City Manager or designee will select the top applicant and offer them the position with the exception of the City Manager and Fire Chief If that person does not accept, then the second candidate will be notified. With the exception of the City Manager and Fire Chief. Approval of the final selection for a position will be made by the City Council upon recommendation of the Mayor, after consultation with the interview committee member(s), the City Manager, and the supervisor, and will be based upon the following:

1. Qualification on skills and/or proficiency tests;

2. Education, backgrounds and experience;
3. Personal interview; and
4. Physical examination when required by the job description.
5. Other job-related selection criteria.

**4.6 Compensation.** The Department head/Supervisor recommendation to the City Manager will include the candidate's compensation which shall comport with a salary survey and the City's budget. With the exception of the City Manager and Fire Chief position. Approval of the candidate's compensations will be made by the City Council upon recommendation of the Mayor.

**4.7 Ineligibility.** Applicants will be considered ineligible for employment by the City for any of the following reasons:

1. Proof of fraud or intentional false statements in an application;
2. Failure to complete the testing requirements; or
3. Failure to appear for processing or for work after notice of appointment.

**4.8 Employment of Relatives/Family Members (Nepotism)**

1. Due to potential for perceived or actual conflicts, such as favoritism or personal conflicts from outside the work environment, which can be carried into the daily working relationship, the City will hire or permit the transfer or promotion of relatives of current employees only if (1) candidates for employment, transfer or promotion will not be working directly for or supervising a relative; and (2) candidates for employment, transfer or promotion will not occupy a position in the same line of authority in which employees can initiate or participate in decisions involving a direct benefit to the relative.
2. For purposes of this policy a "family member" is defined as one of the following: spouse or significant other, parent/stepparent, child/step child, grandparent, grandchild, sibling/sibling-in-law, uncle, aunt, nephew, niece, first cousin, in-laws (father, mother son, daughter).

**SECTION 5: EMPLOYMENT CATEGORIES AND PROBATIONARY PERIODS**

**5-1** Employees shall be assigned under the following categories for the purpose of this section:

1. **Probationary.** A probationary employee is one who, for a given period of time, is being observed and evaluated to determine whether he is qualified for permanent employment with the City of Rio Communities. Probationary employees include all newly hired employees and/or employees promoted, transferred and/or reassigned to a new position. Probationary employees shall be subject to Section

VI, herein below.

2. **Regular Full-Time.** Regular full-time employees are employees who have successfully completed their probationary period and who work regularly in excess of thirty-five hours per week.
3. **Regular Part-Time.** Regular part-time employees are employees who have completed their probationary period and who work less than thirty-five hours per week on a permanent basis.
4. **Temporary.** Temporary employees may be either full-time or part-time, depending on the nature of employment, but who are considered temporary employees if the work being performed has a specified duration, not to exceed six consecutive months, such as employment during peak periods, summer and students under vocational education programs.
6. **Limited-Term.** An employee whose employment term is for a continuous fixed period of time normally in excess of six (6) months and generally less than one (1) year and who works a basic work period. The employment term may only be extended upon the approval of the City Council. The term may be measured by the completion of a specific activity or funding, not necessarily by an ending date. Limited-term employees are not regular employees and do not have recourse to grievance procedures but may participate in employee benefit plans otherwise afforded regular employees. Limited-term positions must be reviewed annually in the budget process to determine future status.
7. **Casual.** A casual employee is an employee paid by the hour that may be called on short notice, on an emergency basis or on an occasional or irregular basis. A casual employee is terminable at will, is not entitled to grieve personnel actions, does not receive benefits and does not accrue leave.

**5.2 Probationary Period Purpose.** The purpose of the probationary period is to give supervisors time to assess whether the employee's skill, performance, reliability and attitude fit the requirements for the position.

**5.3 Probationary Period Considerations AND Procedures**

1. The probationary period for all City employees shall begin on the date of employment and shall continue for 6 months with the exception of first responders (EMS, Fire, Law enforcement), whose probationary period shall continue for 12 months.
2. A probationary employee is an at-will employee and therefore may be terminated at any time during the probationary period by the Mayor, City Manager or

Department Head with or without cause or notice. Council approval is not required to terminate a probationary employee.

3. A probationary employee who is dismissed during the probationary period is not eligible to utilize the City's appeal procedures.
4. All probationary and non-probationary employees will be eligible for fringe benefits such as retirement and health insurance. Sick leave shall accrue from date of employment.
5. The Department Head shall complete at least two (2) performance reviews for a probationary employee prior to the end of the probationary period. The completed performance reviews shall be submitted to the City Manager for review and approval.
6. In cases where the probationary employee's performance is marginal, neither clearly unsatisfactory nor clearly satisfactory, the probationary period may be extended for a period of up to one (1) year in three (3) month increments to allow further evaluation of the employee performance. If the probationary period is extended, the Department Head shall also place the probationary employee on a performance improvement plan (PIP) that is approved as to form by the City Manager. The probationary period will only be extended in exceptional circumstances. Generally, a probationary employee whose performance is still marginal by their second evaluation will be terminated.
7. Any time a decision is made to terminate a probationary employee; a notice of discharge shall be given in writing.

#### **5.4 Promotional Probationary Period**

1. An employee promoted to a higher-level position or laterally transferred shall serve a six (6) month probationary period from the initial promotion or transfer date.
2. This probationary period shall be an integral part of the evaluation of the employee's performance in the new position. At the end of the probationary period, the employee shall be removed from probation unless certification is made by the Department Head to the City Manager that the employee's performance is unacceptable. An employee on probation who is unable to perform satisfactorily in the new position will be returned to the original title, pay grade, and salary, or if this is not possible, to a position at the original pay grade and salary occupied before the promotion or transfer.

**5.5 Performance Reassignment Probationary Period.** An employee reassigned to an alternative position due to an inability to satisfactorily or fully perform the duties of a position to which the employee was hired, promoted, or transferred shall serve a one (1) year probationary period from the reassignment date.

## **SECTION 6: JOB CLASSIFICATION AND PAY PLAN**

**6.1 Job Classification Purpose.** All positions shall be grouped into classes and each class shall include those positions sufficiently similar in character, difficulty, and responsibility considering:

1. The similarity of the worked performed.
2. Comparable level of education, experience, knowledge, ability, and other qualifications may be required of incumbents.
3. Comparable tests of fitness may be required of incumbents.
4. The same general range of compensation will apply with equity under substantially the same employment conditions.

**6.2 Job Descriptions.** The City Manager or designee shall maintain and publish a complete set of descriptions for all job classes. Such descriptions shall include title, typical duties and/or task statements, minimum qualifications, and working conditions. Such descriptions shall be reviewed regularly, but not less than once every four (4) years to maintain their accuracy. The establishment of new or revised classes, or the abolishment of existing classes, shall be recommended by the City Manager to the Mayor, for approval by the City Council.

**6.3 Position Classification Studies.** The City Manager or designee shall make position-classification studies of individual positions whenever he deems it necessary, or whenever requested by the Mayor, City Council, Department Head, or supervisors.

**6.4 Pay Plan Purpose.** The City is working toward establishing a Pay Plan that will include the basic salary schedule adopted by the City Council, together with the assignment of job classes to ranges or rates in the plan as approved by the City Council.

**6.5 Pay Plan Provisions.** Once established, the Pay Plan is intended to provide equitable compensation for all job classes in relation to the pay for other job classes, general rates of pay for similar employment, the financial condition of the City, and other factors. To this end, the City Manager shall regularly, but not less than biannually make comparative studies of all the factors affecting the level of pay and recommend such changes to the plan as may be justified. Such adjustments shall be made by increasing or decreasing the

pay ranges provided in the basic pay schedule as approved by the City Council.

- 6.6 Pay Ranges.** Pay ranges are intended to furnish administrative flexibility in recognizing job content differences among positions allocated to the same class, in providing employee incentive for growth and improved performance, and in rewarding employees for meritorious service.

## **SECTION 7: PERFORMANCE EVALUATION**

- 7.1 Purpose.** The purpose of the performance evaluation is to establish a program of performance appraisal that will encourage objective, systematic review and analysis of each City employee's performance.

- 7.2 Basic Policy.** It shall be the responsibility of the supervisor to conduct performance evaluations. The City Manager will ensure that the performance of each employee is reviewed by the employee's supervisor at the end of each fiscal year. Failure to provide a performance evaluation shall be reported to the Mayor and the City Council. This evaluation shall become part of the employee's permanent personnel record.

### **7.3 Performance Evaluation Procedures**

1. It shall be the responsibility of the City Manager or designee to see that the performance evaluation program is operated as required by this chapter.
2. Supervisors shall conduct a performance evaluation of each employee as provided in this chapter. A complete performance evaluation form will be sent to the City Manager by each supervisor each year. The City Manager shall provide a status report of all City employees at the first council meeting in July of each year.
3. Employees have the right to review their performance evaluation and review the contents of their personnel folder at any time. Employees must sign and may attach comments to the completed performance evaluation. Such signature shall not signify concurrence by the employee as to the contents of the evaluation, but only notice that the employee has read and been made aware of the evaluation's contents. If an employee refuses to sign the completed evaluation, the supervisor shall obtain a management witness to certify the employee has read and been made aware of the evaluation's contents.
4. All performance evaluations shall be confidential, and the contents shall not be disclosed, except within the employee's chain of command including the City Manager, or prospective supervisor and Department Head, in cases of internal transfers or as provided for under law, without the written consent of the employee.

5. Citizen's complaints should not be part of the employee's personnel record unless, after investigation, they have been determined to be founded on fact.

## **SECTION 8: CONDITIONS OF EMPLOYMENT**

### **8.1 Hours of Work**

1. Regular full-time employees are expected to work their assigned hours per week. Work hours may fluctuate at the discretion of Department Heads with advance approval from the City Manager.
2. Lunch breaks are normally one (1) hour, except for those departments with established thirty (30) minute lunch breaks. Such mealtime shall be unpaid time unless the employee is required or permitted to work during such mealtime. An employee may only work during mealtime with advance approval from the City Manager.
3. Employees will be provided one paid fifteen (15) minute break during each four (4) hour period worked. Any other allowances for break times must be requested in writing from the employee and have prior written approval of the Department Director.
  - a. The Department Head will schedule the employees' breaks in such a way as to fulfill the operational needs of the City.
  - b. Breaks may not be accumulated or used in connection with meal periods or taken at the end or beginning of a workday.

**8.2 Attendance and Absenteeism.** Employees will be expected to report for work promptly and be in attendance as scheduled. Absence for any reason should be reported to the supervisor or Department Head one (1) hour before the time the employee is to report to work or as soon as practical. Unauthorized absence from work for three (3) consecutive work shifts will be considered abandonment of the job and automatic termination will result. Employees will be paid for time actually worked unless absences fall under leave provisions.

**8.3 Dress and Personal Appearance.** It is important that City employees present the best possible image to the public. Employees should be as neatly dressed as work assignments allow.

**8.4 Pay Periods.** Each pay period shall be bi-weekly. Under unusual circumstances checks may be issued early, but only upon the request of the Department Head and with the concurrence of the City Manager and Finance Officer/Treasurer.

**8.5 Time Tracking.** All employees are entered in the ESS (employee self service). Employees

will enter their time and submit it to the supervisor who will approve or deny the time. Supervisor-approved time will be submitted to the City Manager for final review and approval.

**8.6 Payroll Deductions.** Deductions from an employee's check are mandatory for federal income tax withholding, Social Security and Medicare taxes (known as FICA taxes), state income tax withholding, any applicable local tax and P.E.R.A. withholding. Employees may choose to have deducted from each check their contribution for health insurance or other benefits available to employees.

**8.7 Final Pay Check.** Employees who resign shall receive a final paycheck, if due, on the first regularly scheduled payday following the effective date of the employee's resignation. An employee who is dismissed shall receive a final paycheck, if due, by 5:00 pm on the fifth day following dismissal. Day one begins the day of dismissal and includes weekends and holidays. In the case of death, final compensation shall be paid to the employee's named beneficiary or, if unnamed, the employee's estate.

**8.8 Transfers**

1. No supervisor or Department Head can deny a City employee who has successfully completed the probationary period and who is not the subject of disciplinary action (pending or imposed), permission to apply for a job vacancy in any other City position or department for which the employee is qualified.
2. Transfers must be approved by the City Manager and will only be considered upon the approval of the receiving Department Head. Should an employee request a transfer, the employee's salary may be reduced, if necessary, to conform to the pay range appropriate to the new position. Any transfer which results in an overall increase in salary and wage expenditure must be approved by the City Council. The employee shall be advised of any changes in pay that will occur as a result of the transfer.

**8.9 Resignations.** A City employee who wishes to resign in good standing must submit a letter to his immediate supervisor at least fourteen calendar days before leaving. All City equipment and property is to be turned in to the department upon termination. If this is not done, the employee will be financially responsible for the value of the unreturned items.

**8.10 Reductions in Force**

1. It may, at any given time, be necessary and appropriate for the City to reduce the number of its employees or abolish some positions because of economic conditions, reorganization, and/or lack of work.
2. When a position is to be discontinued or abolished, the Mayor shall submit to the



City Council for approval a written proposal containing a recommendation for the order of layoff based on:

- a. A determination whether the employee whose position is being eliminated is qualified to perform one or more other jobs with the City; and
  - b. If the immediate supervisor of the position determines this employee is qualified to perform one or more alternate jobs, the application of the rules used to determine reductions in force.
3. When the City wishes to reduce the number of employees without abolishing a position, the Mayor shall submit to the City Council for approval a written proposal containing recommendations for the order of layoff. In determining the order of layoff, the following rules shall apply:
- a. Temporary and/or probationary employees will be laid off first from positions for which a regular employee, subject to reduction in force, is at least as equally qualified;
  - b. Reduction of regular employees will be determined by department, based on ability to perform work, job performance, and seniority;
  - c. Regular employees to be terminated as a result of a reduction in force shall be provided written notice at least two calendar weeks in advance of the effective date of the termination or shall be granted equivalent severance pay; and
  - d. A regular employee terminated as a result of a reduction in force or the elimination of a position shall receive preference in hiring for any position for which they are at least as equally qualified over external employment candidates.
    - i. Terminated regular employees seeking reemployment must follow the established hiring procedures of the City.
    - ii. This privilege ends after six (6) months of after the employee declines an offer of employment from the City, whichever comes first.
    - iii. A regular employee rehired or reinstated within one (1) year of termination as a result of a reduction in force shall be entitled to service credit accrued prior to termination.

**8.11 Outside Employment.** All City employees who wish to engage in outside employment are required to complete a request for permission to engage in outside employment on an annual basis and have it approved by the City Manager before such employment will be authorized. It shall be the responsibility of the employee's Department Head to assure compliance with this rule.

## **SECTION 9: LEAVE**

### **9.1 Vacation**

1. All regular and probationary employees earn and are eligible to use paid vacation from the date of hire as follows:
  - a. Four (4) hours per pay period are accumulated for employees who have served less than five years in the City.
  - b. Five (5) hours per pay period are accumulated for employees who have served more than five (5) years in the City.
  - c. Six (6) hours per pay period are accumulated for employees who have served more than ten (10) years in the City.
  - d. Two (2) hours per pay period are accumulated for part-time regular employees who have served less than five years in the City.
  - e. Two and a half (2.5) hours per pay period are accumulated for part-time regular employees who have served more than five (5) years in the City.
  - f. Three (3) hours per pay period are accumulated for part-time regular employees who have served more than ten (10) years in the City.
2. Employees may use accrued vacation leave in hourly increments. Every effort will be made to grant an employee vacation at the time requested. However, vacations cannot interfere with the City's essential operations and therefore must be approved by the Department Head and City Manager in advance. The City Manager's request for vacation time is approved by the Mayor.
3. City employees may carry a balance of not more than 320 hours of vacation per calendar year. Excess hours will be forfeited at the beginning of the calendar year. The purpose of this provision is to encourage employees to take time off and to avoid imposing a significant liability on the City to pay out unused vacation leave

when an employee separates from employment. Paid holidays which occur during vacation time are not counted as vacation leave.

4. Probationary employees shall not be paid for accrued vacation time upon separation from employment. City employees who separate from employment will be paid for unused vacation time subject to the 320 hour accrual limit.
5. Annually, during the first City Council meeting in December, the City may offer to buy back unused vacation leave hours at 100% of the employees' respective base hourly rates of pay. The number of hours the City may offer to buy back is discretionary. Employee participation is voluntary. An employee's vacation leave accrual balance cannot be reduced below 40 hours as a result of the buy-back.

## **9.2 Holidays**

1. The holiday schedule shall be designated by resolution of the City Council each year.
2. Regular full- and part-time, employees shall be paid for the holiday at their regular rate of pay. Temporary, casual and limited term employees are not entitled to holiday pay.
3. Employees required to work an approved City holiday shall be paid two and one-half (2.5) times their regular rate of pay for the holiday hours actually worked, not to exceed twelve (12) hours.
4. When a holiday falls during an employee's use of annual leave, the day shall be counted as a holiday and not annual leave.
5. If a paid holiday falls on the employee's regular day off, the employee may float the paid holiday.

**9.3 Personal Leave Day.** Regular employees are entitled to one (1) personal leave day each calendar year. The personal leave day will be consistent with the employee's normal workday. Such leave must be requested and approved in advance. The personal leave day must be taken during consecutive hours. The personal leave day must be taken by December 31 or it will be lost. Employees who do not take the personal leave day shall not be paid for it upon separation from City employment.

## **9.4 Sick Leave**

1. Sick leave benefits are accrued at the rate of four (4) hours per pay period. Part-time employees accrue sick leave at the rate of two (2) hours per pay period. Unused sick leave shall be accumulated from year-to-year capping at 320 hours.

Employees on probationary status shall be credited with sick leave for each pay period worked.

2. Sick leave should only be used as needed, and abuses of sick leave will be grounds for disciplinary action. If an employee has used all accrued sick leave, the employee may choose to use his accrued vacation as sick leave with approval of his supervisor. The employee must be able to justify the use of vacation leave as sick leave.
3. Employees using sick leave shall notify their supervisor before the start of their scheduled work shift. Sick leave of more than three days duration may require certification by a licensed health care provider as to the nature of the illness be submitted to the City Manager. Persons on sick leave for more than five (5) consecutive work days may be required to have a physical examination but shall be required to be certified fit to return to work by a licensed health care provider. Physical examinations required by the City will be paid for by the City.
4. An employee may use accrued sick leave to care for members of the employee's immediate family (employee's spouse or ex-spouse, live-in partner, children, stepchildren, parents, step- parents, siblings, grandparents, step-grandparents, grandchildren, step-grandchildren, aunts, uncles, first cousins, nieces, nephews, and the like relations of the employee's spouse. This definition shall cover any person so related to the employee by birth, adoption, or marriage). A licensed health care provider's certification may be required stating the family member's condition before sick leave is granted.
5. Regular, probationary, temporary, and limited-term employees shall not be paid for accrued sick leave time upon separation from employment with one exception. Regular employees who retire from the City will be paid for unused sick time up to 50 hours.

#### **9.5 Donated Leave**

1. There are occurrences brought about by medical conditions that cause employees to exhaust leave and therefore be placed on leave without pay. It is recognized that employees forced to go on leave without pay could be without income at a most critical point in their life. Employees who want to assist their fellow workers by donating leave can do so through this provision of the policy manual.
2. For the purpose of this section, "medical conditions" shall be interpreted to include a serious illness or injury which is monumental, unusual, immediate in nature and which is expected to preclude the employees from returning to work for an extended period of time. This shall involve but is not limited to:

- a. Any period of incapacity or treatment connected with inpatient care (e.g., an overnight stay) in a hospital, hospice, or residential medical care facility;
  - b. A period of incapacity requiring absence of more than three calendar days from work that involves continuing treatment by (or under the supervision of) a licensed health care provider;
  - c. Any period of incapacity due to pregnancy, or for prenatal care;
  - d. Any period of incapacity or treatment due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.);
  - e. A period of incapacity that is permanent or long-term due to a condition for which treatment may be effective (e.g., Alzheimer's, stroke, terminal disease, etc.); or
  - f. Any absence to receive multiple treatments (including any period of recovery) by, or referral by, a licensed health care provider (e.g., chemotherapy, physical therapy, dialysis, etc.).
3. General Guidelines. The following guidelines apply to the City's Donated Leave policy:
- a. Leave may be donated from vacation or sick leave.
  - b. An employee cannot donate from either the vacation or sick leave if the donating employee's balance will fall below 40 hours.
  - c. Leave donated will be added to the recipient's sick leave balance limiting its use for a medical condition only.
  - d. The minimum donation allowable is four (4) hours.
  - e. Leave shall be donated on a one-to-one personal basis. Establishment of a leave "pool/bank" is expressly prohibited.
  - f. The donation and receipt of leave shall be completely voluntary, and anyone who interferes with an employee's right to choose whether to donate or receive leave shall be subject to disciplinary action.
  - g. Individual leave records are confidential and only involved individuals may reveal their donation or receipt of leave.

- h. The employee donating leave cannot receive compensation for the leave donated.
  - i. Upon return to work the recipient will be allowed to retain up to 40 hours in their sick leave account.
  - j. Any additional unused donated leave beyond 40 hours will be returned to the donor(s) on a pro-rated basis and credited to the leave account from which it was donated. Fractions of the hour shall not be returned to an individual donor.
  - k. If a recipient of donated leave separates from the City of Rio Communities employment, the donated leave remaining in the recipients account shall be returned to the donors' accounts on a pro-rated basis.
4. Recipient Requirements. The following requirements apply to the recipient of donated leave:
- a. When requesting donated leave, the employee or the immediate supervisor must complete in writing and forward the request for donated leave including the physician certification to the City Manager. All medical information is confidential. When disclosing information about an applicant the City will state only that the requesting individual or the individual's family member has a "medical condition".
  - b. An employee must exhaust all types of leave before any donated leave will be used.
  - c. While using donated leave, the employee continues to earn vacation and sick leave. This earned vacation and sick leave should be used each month prior to any donated leave.
  - d. Upon return to work, an employee is allowed to retain 40 hours of the donated leave in his sick leave account. Any remaining leave over 40 hours will be prorated back to the donors in the leave reporting period immediately following the employee's return to work. This action is reflected in the adjustments column of the employee's monthly leave report.
  - e. An employee's participation in donated leave is limited to 520 hours either continuously or, if for the same condition, on a recurring basis. However, a continuation may be granted month by month for any amount of time that management would otherwise have granted leave without pay.

**9.6 Family and Medical Leave of Absence.** The purpose of Family Medical Leave is to balance the demands of the work place with the needs of families to promote the stability and economic security of families; to minimize the potential for employment discrimination on the basis of sex by ensuring that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons; and to promote the goal of equal employment opportunity for women and men.

1. Employee Eligibility

- a. Permanent employees who have been employed with the City of Rio Communities for at least 12 months and who have worked at least 1250 hours (half-time) during the previous 12-month period are entitled to a total of 12 workweeks of leave, paid or unpaid, during any rolling 12-month period for one or more specified conditions which are covered under this Act.
- b. For the purpose of this policy, the 12-month period is defined as 12 months from the date of the qualifying event.

2. Qualifying Conditions

- a. Birth of a child and care for the child after birth, provided the leave is taken within a 12-month period following birth,
- b. Care for a child placed with the employee for adoption or foster care, provided the leave is taken within a 12-month period following adoption.
- c. Care for the employee's child, spouse, or parent, where that child, spouse, or parent has a serious health condition.
- d. A serious health condition that makes the employee unable to perform the essential functions of his position.

3. FMLA Leave Options

- a. Eligible employees are entitled to 12 weeks of unpaid leave within a rolling twelve-month period.
- b. Eligible employees may choose to use paid leave in the form of vacation, sick, compensatory, or donated leave.
- c. Eligible employees may choose to use the FMLA Leave on an intermittent basis or on a reduced work schedule.

4. Definitions

- a. Parent - a biological or adoptive parent or an individual who stood in loco parentis (a person who is in the position or place of a parent) to an employee when the employee was a child. If an employee requests FMLA to care for an individual who stood in loco parentis, the employee must provide documentation verifying the relationship. If legal records are not available, the employee has the burden of proof and must submit written documentation explaining the relationship covering periods of residence, facts and circumstances. Someone who was in a position to know of the relationship must verify this documentation through signature and notary.
  - b. Child - a son or daughter who is under 18 years of age or is 18 years of age or older and incapable of self-care because of a mental or physical disability. Child would include: (a) biological, (b) adopted, (c) foster, (d) step-child, (e) legal ward, and (f) child of an employee standing in loco parentis as defined above.
  - c. Spouse - a husband or wife recognized by the State of New Mexico.
  - d. Serious Health Condition - (a) an illness, injury, impairment, and/or physical or mental condition that involves either inpatient care in a hospital, hospice, or residential medical care facility, or that involves continuing treatment by a health care provider; (b) any period of incapacity requiring absence from work of more than three (3) calendar workdays that also involves continuing treatment by a health care provider; or (c) continuing treatment by a health care provider for conditions so serious that, if not treated would likely result in an absence of more than three (3) calendar workdays. Prenatal care is also included. The period of actual physical disability associated with childbirth is considered a serious health condition and may be subject to family/medical leave regulations, whether as paid or unpaid leave.
  - e. Intermittent Leave or Reduced Work Schedule- an intermittent work schedule is a schedule in which an employee works on an irregular basis and is taking leave in separate blocks of time, rather than for one continuous period of time. The leave period may not exceed the total of the allowed 12-week period.
5. Administration of Family Medical Leave
- a. An employee desiring to use Family Medical Leave needs to contact the City Manager or designee prior to the requested leave period whenever possible.
  - b. Requests for FMLA Leave must be supported by reasonable proof.



- c. If an employee is unable to initiate the contact with the City Manager or designee for Family Medical Leave, the Department Head is responsible for contacting the City Manager or designee to investigate the designation of the leave period as paid or unpaid FMLA Leave. The designation must be made on the Family Medical Leave Request Form and must be completed prior to the extension of FMLA Leave.
- d. If an employee on paid leave has not provided sufficient information to determine whether it is designated as FMLA Leave the Department Head shall, after a period of 10 workdays, request that the employee provide sufficient information to establish a FMLA-qualifying reason for the needed leave. This does not preclude the department from requesting the information sooner or at any time an extension is requested.
- e. Employees designated on FMLA Leave have the following options for charging leave:
  - i. For the birth of a child, the employee may choose to exhaust available compensatory, vacation, sick, and/or donated leave, or any portion, or go on leave without pay.
  - ii. For the adoption or foster care of a child, the employee may choose to exhaust available compensatory, vacation, sick, and/or donated leave, or any portion, or go on leave without pay;
  - iii. For the illness of an employee's child, spouse, or parents, the employee may choose to exhaust available compensatory, vacation, sick, and/or donated leave, or any portion, or go on leave without pay;
  - iv. For the employee's illness, the employee shall exhaust available sick leave and may choose to exhaust available compensatory, vacation leave, and/or donated leave, or any portion, before going on leave without pay.
  - v. Employees desiring to work a reduced or intermittent work schedule under FMLA Leave will need to contact the City Manager or designee for further instructions. Employees approved for one of these options will experience a reduction in monthly earning rates.

6. Notice to Employer. It is the responsibility of the employee to explain the reasons for the FMLA Leave in sufficient detail to allow the City to determine that the leave qualifies under the FMLA. If the employee fails to adequately explain or document the FMLA-qualifying reasons for the leave after a request by the City, leave may be denied. Where the necessity for FMLA Leave for the birth or placement of a child is foreseeable, the employee shall give the City at least 30 days' advance notice (before the date the leave is to begin) of the employee's intention to take such leave. In other cases, the employee shall provide such notice as soon as practical. As soon as practical means at least verbal notification to the City within one or two business days of when the need for leave becomes known to the employee. An employee shall at least provide verbal notice to the City of the need for FMLA Leave and the anticipated timing and duration of the leave. The City may also require an employee to comply with the City's usual and customary notice and procedural requirements for requesting leave. If the employee fails to give timely advance notice when the need for FMLA Leave is foreseeable, the City may delay the taking of FMLA Leave until 30 days after the date the employee requested the need for the FMLA Leave. In some circumstances, employees may need to make the request for FMLA Leave after the fact. If this occurs, employees have two business days upon returning to work to provide the appropriate information in order to be entitled to the protections of FMLA.
7. Notice to Employee. Once the City has received a request for a FMLA required reason, the City shall promptly (generally within two business days, absent extenuating circumstances) notify the employee that the leave is designated and will be counted as FMLA Leave. The City may give such notice in writing.
8. Medical Certification. Any request for FMLA Leave for a serious health condition shall be supported by a certification issued by the health care provider of the eligible employee or of the son, daughter, spouse, and a parent of the employee or an individual who has acted in loco parentis to an employee as appropriate. Such medical certification should be attached to the employee's request for FMLA Leave, or in the case of unforeseen leave, generally within two business days after the leave commences. In the case of foreseeable leave, the City may delay the taking of FMLA Leave to an employee who fails to provide timely certification after being requested by the City to furnish such certification (within 15 calendar days, if practicable), until the required certification is provided. In the case of unforeseeable leave, if the employee does not provide the medical certification within a reasonable time, the City may delay the continuation of FMLA Leave. If the employee never produces the required medical certification, or if the certification does not confirm the existence of a serious health condition as defined under FMLA, then the leave is not FMLA Leave. In any case in which the City has reason to question the appropriateness of the leave or its duration the City may request certification at some later date. If

the City has reason to doubt the validity of the certification provided the City, the City may require at its expense, that the eligible employee obtain the opinion of a second (or third) health care provider.

9. Confidentiality. All records and documents relating to medical certifications, re-certification or medical histories of an employee's family members, shall be maintained in a separate medical file from the employee's personnel file, and shall be treated as confidential medical records.
10. Restoration to Work
  - a. Any eligible employee who takes approved FMLA Leave shall be entitled, upon return from such leave:
    - i. To be restored by the City to the same position of employment held by the employee when the leave commenced; or
    - ii. To be restored to an equivalent position with equivalent employment benefits, pay, and other terms and condition of employment.
  - b. If the employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition, the employee has no right to restoration to another position under the FMLA. However, the City will review such situations on a case-by-case basis under the ADA.

#### **9.7 Group Health Plan Coverage**

- a. The City shall maintain coverage for the employee under the City's group health plan for the duration of the 12-week FMLA Leave period at the level and under the conditions coverage would have been provided if the employee had continued employment.
- b. Any share of health plan premiums paid by the employee prior to leave must continue to be paid by the employee during the leave period.
- c. The City must give advance written notice to employees of the terms for payment of premiums during FMLA Leave.
- d. The City's obligation to maintain dependent health insurance coverage stops if an employee's premium payment is more than 30 days late. The City must provide the employee with at least 15 days' notice that coverage will cease.

- e. If an employee's failure to make the premium payments leads to a lapse in coverage, the City must still restore the employee, upon return to work, to the health coverage equivalent that employee would have had if leave had not been taken and premium payments had not been missed without any waiting period or preexisting conditions.
- f. The City may recover the premiums if the employee fails to return for a reason other than the continuation, recurrence, or onset of a serious health condition of the employee or the employee's immediate family member, or other circumstances beyond the employee's control.

**9.8 Other Benefits**

- a. Maintenance of health insurance policies that are not a part of the City's group health plan (where no contributions are made by the City) is the sole responsibility of the employee.
- b. Taking FMLA Leave shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.

**9.9 No Retaliation.** The City shall not interfere with an eligible employee's rights under the FMLA, shall not discharge or otherwise discriminate against employees who exercise such rights, and shall not retaliate against employees who file, initiate, or otherwise assist in charges or investigation against the City.

**9.10 Rights and Obligation of Employees.** When an employee provides notice of the need for FMLA Leave, the City shall provide the employee with a Notice (within two business days, if feasible) detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations.

**9.11 Leave Without Pay.** The City Manager may grant a regular employee leave without pay for a period not to exceed one year. Leave without pay may be granted only when it is in the best interest of the City, and only following consideration of the employee's performance and disciplinary history, and the potential disruption of City operations.

- 1. For leave without pay a written request indicating the reason for the leave, duration, and dates of departure and return, must be approved by the City Manager before leave is taken.
- 2. Employees on leave without pay shall not accrue annual or sick leave for those hours on leave without pay, nor be paid for observed holidays.
- 3. During an employee's approved leave without pay, his position may be filled by

temporary appointment, a temporary promotion, limited term employee or detail to another employee. At the expiration of a leave without pay, the employee has the right to and shall be reinstated in the position he vacated if the position still exists; or, if not, to any other vacant position of like seniority, status and pay. If no vacancy exists, the employee will be offered the first available position for which he qualifies. If no position is found within a period of one-hundred twenty (120) days, the employee will be terminated.

**9.12 Bereavement Leave.** In the event of a death in the employee's immediate family, (employee's spouse or ex-spouse, live-in partner, children, stepchildren, parents, stepparents, siblings, grandparents, step-grandparents, grandchildren, step-grandchildren, aunts, uncles, first cousins, nieces, nephews, and the like relations of the employee's spouse. This definition shall cover any person so related to the employee by birth, adoption, or marriage) the employee will be permitted three (3) days leave with pay per occurrence not chargeable under any benefits. After three (3) days, bereavement leave will be charged against the employee's sick leave. An employee must notify the employee's Department Head before taking such leave.

**9.13 Military Leave.** Leave with pay will be granted for a period of two weeks per year to permanent full-time employees and permanent reserve part time employees enrolled in the National Guard or military reserve units to attend training camp or exercises. In cases where such leave is granted, the employee must furnish proof of duty orders before leave being granted. The equivalent of National Guard military reserve pay will be deducted from the employee's paycheck, and if the employee's regular income from the Military Reserve Service is in excess of the employee's regular income from the City, then the employee shall not be entitled to any pay from the City.

**Unpaid Military Leave.** Regular employees who are members of the Armed Forces, the Army National Guard, the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty are entitled to re-employment after up to five years of service. PERA contributions may not be withdrawn when an employee begins military leave without pay. Upon re-employment, such employees shall receive any necessary pay adjustment such as provided to other employees during the period of active duty.

1. Employees must apply for re-employment within fourteen days of the date of release from active duty where the active service was from 31 to 181 days.
2. Employees must apply for re-employment within ninety days of the date of release from active duty where the active service was more than 181 days.
3. For service of 90 days or less, the employee is entitled to the position he would have been employed in if continuous employment had not been interrupted or

the position in which the employee would have been employed on the date of the commencement of service.

4. For service of more than 90 days, the employee is entitled to the position in which he would have been employed if the continuous employment had not been interrupted or the position of employment in which he was employed at the date of commencement of service, or a position of like seniority, status and pay.

**9.14 Jury Duty.** Employees will be granted court leave for the purpose of serving as a juror or witness in any court. Court leave with pay will be authorized only during those days which would otherwise have been an employee's regular scheduled working days.

**9.15 Voting Leave**

1. The City encourages employees to register and vote in every election where they are eligible to vote. On election day, employees shall be allowed up to two (2) hours leave with pay to vote, provided the employee's work day does not begin more than two (2) hours after the polls open or end more than three (3) hours before the polls close. To comply with this requirement, the City may adjust the employee's work schedule on Election Day. For example, on Election Day, the City may allow an employee to start the work day two (2) hours later than normal and end their work day two (2) hours later than normal. Employees may be required to show they are registered eligible voters to qualify for voting leave.
2. The employee shall request such voting leave at least three (3) work days in advance with his Department Head in order to allow adequate time to make arrangements for full department coverage.

**9.16 Domestic Abuse of Sexual Violence Leave (DASV)**

1. In accordance with New Mexico law, the City will grant up to 14 days of DASV unpaid leave in any calendar year to an employee who is a victim of domestic abuse or sexual violence, or who has a family or household member who has been a victim. Alternatively, the employee must use accrued leave. When possible, the employee should provide the City with at least 48-hours advance notice of DASV leave.
2. Verification of the need for DASV leave may be requested. This verification may be a police report, court record, doctor's certification, copy of order of protection, or a written statement from an attorney.

### 9.17 Nursing Mother's Leave

1. To foster the ability of a nursing mother who is an employee to use a breast pump in the workplace, the City will provide a space for using the breast pump that is (1) clean and private; (2) near the employee's workspace; and (3) not a bathroom. The City will also provide the employee flexible break times.
2. The City is not responsible for storage or refrigeration of breast milk. The City is also not responsible for compensating a nursing mother for break times that are in addition to established employee breaks or paying overtime while a nursing mother is using a breast pump.

### SECTION 10: OVERTIME AND COMP TIME

- A. A non-exempt employee shall not work more than the regularly assigned workweek without the City Managers prior approval. Non-exempt employees who work in excess of the normal 40-hour workweek shall be compensated at the rate of 1½ times the employee's regular base rate of pay for each hour of overtime worked. Overtime work will be compensated in 15-minute increments. Rates consistent with the fair labor standard act (FLSA) (29usc201, et seq)
- B. Working overtime without prior approval is just cause for disciplinary action, up to and including termination.
- C. Payment for overtime may be in the form of cash ("overtime pay") or compensatory time ("comp time"). In times of budgetary constraint, the City of Rio Communities, at its sole discretion, may elect to pay employees overtime in the form that best suits the City.
- D. An employee is not entitled to overtime pay or comp time unless that employee has actually *worked* more than 40 hours in a given workweek. The time an employee takes off from work for a holiday, vacation, personal leave, or an illness is not considered hours worked for purposes of calculating overtime, even if the employee is paid for that time with accrued leave or accrued comp time.
- E. All City employees, including commissioned police officers, eligible for overtime compensation may accrue a maximum balance of 120 hours of comp time. If an employee has reached the accrual limit for comp time set forth in this paragraph, any additional overtime worked by the employee shall be paid out in the form of cash.
- F. The City strongly encourages all employees to use their accrued comp time within 6 months of earning it. Employees may use comp time at any time with the prior approval of the eligible employee's supervisor unless the granting of such time

would unduly disrupt the effective functioning of the employee's department. Mere inconvenience is an insufficient basis for denial of a request to use accrued compensatory time.

- G. At any time, an employee may request that the City of Rio Communities cash out his accrued but unused comp time balance, even if the balance is below the accrual maximum set forth in paragraph 6. The City of Rio Communities, at its discretion, may grant the employee's request, giving consideration to budgetary constraints and priorities. Such payment must be made at the regular hourly rate of pay received by the employee at the time of payment.
- H. The City may, at any time, elect to pay out some or all of an employee's accumulated compensatory time. Such payment must be made at the regular hourly rate of pay received by the employee at the time of payment. It is within the City's sole discretion whether to pay out some or all accrued comp time.
- I. Upon an employee's retirement, resignation or termination, the City of Rio Communities shall pay the employee for the balance of his accrued but unused comp time at a rate not less than the employee's final hourly pay rate or the employee's average hourly rate over the last three (3) years of employment, whichever is greater. In instances where the employee has less than three (3) years of employment with the City of Rio Communities, the average pay rate for the entire period of employment shall be used instead.
- J. Supervisors shall monitor overtime worked and compensatory time accrued and shall encourage the use of compensatory time as the opportunity arises, in order to minimize the City of Rio Communities' overtime pay liability. The supervisors' monitoring of overtime and encouraging the use of comp time will be considered as part of the supervisors' performance evaluation.

## **SECTION 11: POLITICAL ACTIVITY**

City employees shall not, during working hours, publicly support or endorse any person running for political office. City employees should not be harassed for political support by any political candidate, Department Head or Elected Official. An employee cannot be fired or penalized for failure to support a particular candidate. This is to ensure the protection of the employee from any unnecessary interference with the employee's job. The employee's job does not depend upon political beliefs, but upon the employee's job skills and performance.



## SECTION 12: GRATUITIES – SOLICITATION

**12.1 Gratuities.** City employees shall be prohibited from accepting gifts or other considerations from vendors where the value of such gifts or considerations is in excess of twenty-five dollars (\$25.00). Any attempt to influence an employee's performance of the employee's duties by a vendor or other persons should be reported to the City Manager.

**12.2 Solicitations.** No solicitation by employees or others will be allowed in a City-owned building or on City property. All legitimate proposals should be directed to the Department Heads or persons responsible for purchasing. Salesmen should not consult directly with employees without permission of the employee's supervisor. Limited exceptions may be authorized by the City Manager for charitable solicitations.

## SECTION 13: RULES OF EMPLOYEE CONDUCT AND DISCIPLINARY ACTION

**13.1 Rules of Employee Conduct.** Reasonable rules of employee conduct are necessary for the orderly and effective operation of the City. Some of the more obvious examples of unacceptable conduct are listed below. This list is not all inclusive and is not intended to refer to all possible policy infractions. Employees should contact the City Manager or designee with any questions regarding the City's rules of employee conduct.

1. Violation of the City personnel ordinance, policies, or rules.
2. Incompetence, inefficiency, or inadequate performance of an employee's duties.
3. Insubordination or uncooperative behavior.
4. Leaving work before the end of a workday or not being ready to work at the start of a workday without approval from the employee's supervisor; stopping work before the time specified for such purpose.
5. Failure to report an absence or late arrival; excessive absence or tardiness.
6. Use of official position or authority for personal profit or advantage, including a violation of the Governmental Conduct Act, NMSA (1978), §10-16-1, *et seq.* (as amended), which sets forth the ethical principles of public service and prohibits certain official acts. A copy of the Act is available from the City Manager.
7. Violation of security or safety practices.

8. Commission of a felony or misdemeanor related to the position held by the employee or conviction of a crime involving moral turpitude.
9. Violence or threats of violence toward anyone while on duty, on City property, driving a City vehicle or equipment, representing the City, or wearing a City uniform. Fighting, horseplay or provoking a fight.
10. Obscene, abusive, or rude language or behavior toward any supervisor, employee, or member of the public; any disorderly or antagonistic conduct.
11. Malicious gossip and/or spreading rumors; engaging in behavior designed to create discord and lack of harmony; interfering with another employee on the job; willfully restricting work output or encouraging others to do the same.
12. Misappropriation or personal use of City funds, property, or resources; theft or fraud.
13. Intentionally or negligently causing damage to City tools, equipment, or other property;
14. Failure to immediately report damage to, or an accident involving City vehicles or equipment.
15. Violation of confidentiality or release of confidential information.
16. Deliberate falsification or omission of information on an employment application, resume, timecard/record, or other City documents.
17. Soliciting during work hours and/or on City premises; selling merchandise or collecting funds of any kind for whatever purpose without the City Manager's prior approval, or at a time or place that interferes with the work of another employee on City property or at a City worksite.
18. Conducting a lottery or gambling on City premises or while on duty.
19. Failure to maintain a neat, clean and professional appearance or wearing unsafe clothing to perform employee's specific job duties.
20. Other acts or omissions, on or off-duty, that may result in disciplinary action include those that:

- a. Call into question the employee's ability to perform assigned duties or job functions;
- b. Harm public respect for the City's employees or confidence in the operation of City services; or
- c. Impair the operation or efficiency of any City function.

**13.2 Just Cause for Disciplinary Action.** Failure or refusal to meet the standards of employee conduct shall constitute just cause for disciplinary action. Regular full-time and regular part-time employees may be disciplined only for just cause. Unlike regular employees, probationary employees, temporary employees, limited-term employees, and other at-will employees may be discharged without cause or for any lawful reason.

**13.3 Progressive Discipline.** Occasionally, disciplinary action is necessary to correct employee misconduct or performance that fails to meet expectations. The type of corrective or disciplinary action imposed will depend on the severity of the infraction and the employee's previous work record. Progressive discipline will normally be used; however, some infractions may be so serious that the first disciplinary action may require suspension without pay, demotion or even dismissal.

**13.4 Documentation.** In every situation involving any form of corrective or disciplinary action, documentation of such action shall be prepared. Any such documentation given to an employee should be signed by the employee to acknowledge receipt. If the employee refuses to sign the documentation, another employee should be called in to sign the form as a witness to the fact that the counseled or disciplined employee received the documentation but refused to sign it.

**13.5 Range of Counseling and Discipline.** The range of counseling and discipline is as follows:

1. **Verbal Counseling.** A supervisor may verbally counsel an employee for minor infractions and to inform the employee that behavior or conduct needs to change or improve. The supervisor should inform the employee that the supervisor is verbally counseling the employee. Verbal counseling should: (A) remind the employee of pertinent policies and work rules; (B) provide examples of how the employee's behavior or performance has fallen short of expectations; (C) explain the impact of the employee's deficiencies on the City and coworkers; (D) describe the actions the employee needs to take to correct the problem; and inform the employee that failure to improve may result in more severe discipline. Supervisors shall prepare a memorandum for the supervisor's own records indicating that the employee has received a verbal counseling. Documentation of a verbal counseling

shall not be placed in the employee's personnel file. Verbal counseling is not grievable.

2. **Written Reprimand.** A supervisor may issue a written reprimand to an employee in circumstances where the infraction is perceived to be of a greater consequence than that for which a verbal counseling would be used or if the verbal counseling was ineffective.

A written reprimand shall include the following information: (A) the date(s) on which the unacceptable performance occurred and a brief description of the incident(s); (B) a reference to the policy(ies), rule(s) or directive(s) that were violated; (C) prior counseling or discipline, if any, imposed on employee during the employee's time with the City; (D) a statement of the potential disciplinary consequences if performance does not improve; and (E) the goals of improvement and a time frame, if applicable, to accomplish these goals.

Written reprimands shall be placed in the employee's personnel file after providing the employee with a copy of the written reprimand. The employee shall be asked to acknowledge having received the reprimand by signing it. If the employee refuses to sign, another supervisory level employee (by his signature) shall attest that the written reprimand was presented to the employee for his signature and the employee refused to sign. A written reprimand is not grievable.

3. **Suspension without Pay.** The Mayor or City Manager may suspend an employee without pay for a single serious offense or for continued substandard job performance or misconduct after previous attempts to correct such behavior have failed. Such suspension shall not exceed thirty working days (30). A suspension without pay for a FLSA exempt employee shall be in workweek increments not to exceed six workweeks, unless otherwise provided by law. A regular, full-time or regular, part-time employee may appeal a suspension without pay pursuant to the City's grievance procedures.
4. **Demotion.** The Mayor or City Manager may demote an employee in those instances where the employee is unwilling or unable to perform the responsibilities of his position. The employee may be moved from one position to another position with a lower pay rate for which the employee qualifies or, alternatively, the employee may be permitted to remain in the same position but will be subject to a reduction in his pay rate. Demotion is not to be used as a substitute for discharge from employment, when a discharge is warranted. A regular, full-time or regular, part-time employee may appeal a demotion pursuant to the City's grievance procedures.
5. **Dismissal.** The City Council may, upon the Mayor's recommendation which will be

made in the form of a Notice of Intent to Discipline, dismiss an employee when other forms of discipline have failed to improve unacceptable behavior or job performance, or the employee's conduct is severe enough to preclude corrective action. A regular, full-time or regular, part-time employee may appeal a dismissal pursuant to the City's grievance procedures.

Probationary employees, temporary employees, limited-term employees and other at-will employees may be discharged at any time without cause or for any lawful reason by the Mayor, City Manager or Department Head. These employees may not appeal a decision to dismiss them from employment pursuant to the City's grievance procedures.

**13.6 Notice of Intent to Discipline.** The Mayor, City Manager or designee shall present the employee with a Notice of Intent to Discipline when suspension, demotion, or dismissal is contemplated. The Notice of Intent to Discipline shall include the following information: (A) the date(s) on which the unacceptable performance or conduct occurred and a brief description of the incident(s); (B) a reference to the policy(ies), rule(s) or directive(s) that were violated; (C) prior counseling or discipline, if any, imposed on employee during the employee's time with the City; (D) a statement of the contemplated discipline; (E) a statement of the potential disciplinary consequences if performance does not improve; (F) the goals of improvement and a time frame, if applicable, to accomplish these goals; and (G) the employee's right to a pre-disciplinary hearing. The Notice of Intent to Discipline shall be hand-delivered to the employee and receipt acknowledged by him, or sent to the employee by certified mail, return-receipt requested. The Notice of Intent to Discipline shall be placed in the employee's personnel file after providing the employee with a copy. If the Notice of Intent to Discipline is hand-delivered and the employee refuses to sign it, another supervisory level employee (by his signature) shall attest that the Notice of Intent to Discipline was presented to the employee for his signature and the employee refused to sign.

**13.7 Pre-Disciplinary Meeting and Notice of Final Action.** Within three (3) working days of the receipt of the Notice of Intent to Discipline the employee shall notify the City Manager, in writing, whether he will avail himself of the pre-disciplinary meeting. Such notice shall be hand-delivered with receipt acknowledged. If the employee does not avail himself of the pre-disciplinary hearing, the City Manager shall issue a Notice of Final Action to the employee which shall:

1. Specify the final action to be taken and the factual basis for the final action;
2. Specify the effective date of the disciplinary action; and
3. Inform the employee of his right to appeal.

In the event the employee wishes to avail himself of a pre-disciplinary meeting, the nature of the pre-disciplinary meeting will depend on the type of discipline being proposed.

If the contemplated discipline is a suspension or demotion, the City Manager and/or Department Head will meet with the employee at a pre-arranged time. At the pre-disciplinary meeting, the employee will be given the opportunity to respond to the allegations in the Notice of Intent to Discipline and offer explanations and/or present evidence and reasons supporting mitigation. No witnesses will be permitted at the informal meeting. This will not be an evidentiary hearing. Neither the City nor the employee will not be permitted to have a representative present at the pre-disciplinary meeting.

If the contemplated discipline is termination, the Mayor's recommendation will be placed on the agenda for the executive session of the next regular meeting of the City Council. During the executive session, the employee will be given the opportunity to respond to the allegations in the Notice of Intent to Discipline and offer explanations and/or present evidence and reasons supporting mitigation. No witnesses will be permitted to address the Council during executive session. This will not be an evidentiary hearing. The employee may have a representative present for the presentation to the City Council. After hearing from the employee, the Council will excuse the employee and discuss the proposed termination. A vote will be taken during the public portion of the meeting.

After taking the employee's response into consideration, a Notice of Final Action shall be issued to the employee if it is determined that discipline is warranted. The Notice of Final Action shall specify the final action to be taken, and the factual basis on which the final action is based, state the time, date, and location of the pre-disciplinary meeting, persons present, the effective date of the final action, and the employee's right to appeal the disciplinary action.

The Notice of Final Action shall be either hand-delivered to the employee and receipt acknowledged by him or sent to the employee by certified mail, return-receipt requested. If the employee refuses to sign, another supervisory level employee (by his signature) shall attest that the Notice of Final Action was presented to the employee for his signature and the employee refused to sign. The Notice of Final Action shall be placed in the employee's personnel file. An employee who is dismissed for cause will not be considered for reemployment with the City.

**13.8 Administrative Leave with Pay Pending Investigation and/or Disciplinary Proceeding.**  
The Mayor or City Manager may authorize administrative leave with pay when an employee is ordered to leave the premises or work site pending an investigation, while

disciplinary action is being contemplated and/or pending issuance of the Notice of Final Action. Generally, this leave is authorized when the employee is disruptive or poses a threat of harm to himself, others, or City property. During this period, the employee continues to accrue benefits as if he were still on duty.

Employees on paid administrative leave shall be available in person and telephonically between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. Failure to comply or attend any scheduled meetings as directed by the employee's supervisor shall constitute an unauthorized leave without pay. Employees on paid administrative leave shall not obtain other employment. The supervisor will document the administrative leave and include expectations of the employee while on leave, including but not limited to the return of City equipment.

Administrative leave with pay under these circumstances does not constitute discipline and may not be appealed under the City's grievance procedures.

### **13.9 Grievance Procedure**

1. **Applicability.** A regular employee who has successfully completed his probationary period may pursue grievances according to the rules contained in this Section.
2. **Attendance at Grievance Hearings.** Employees who have filed grievances and employees required to give testimony as witnesses in a grievance hearing shall be given time off with pay if such meetings or hearings are scheduled during their regularly scheduled work hours. Former employees, or employees on suspension, layoff, or other unpaid status shall not receive pay to attend grievance hearings.
3. **Conditions or Actions Not Grievable.** The following conditions or actions are not grievable:
  - a. Whether an established City policy or practice is appropriate.
  - b. In matters where a method of review is mandated by law or where avenues of statutory review are available such as review which may be obtained through the filing of charges with the N.M. Human Rights Bureau or Equal Employment Opportunity Commission or the filing of a Worker's Compensation Claim.
  - c. In matters where the City is without authority to act or does not have the ability to provide a remedy.
  - d. Disciplinary action for a probationary, temporary, limited-term or other at-will employees.

- e. Verbal counseling, written reprimand or job abandonment.
- f. Transfers, assignments, removal from assignments, temporary upgrades and promotions.
- g. Position evaluation/audit, job evaluations, performance reviews, or selection for vacant positions.
- h. Denial or termination of self-employment / supplementary / outside employment.

**13.10 Post-Discipline Appeal.** A regular employee who has been suspended without pay, involuntarily demoted or terminated may appeal his discipline to a neutral hearing officer.

1. **Notice of Appeal.** Within five (5) business days of receipt of the Notice of Final Action, the employee must give written notice to the City Manager of the employee's intent to pursue a post-disciplinary hearing. The written notice must be hand-delivered or mailed via certified mail, return receipt requested. This deadline is of the essence and strictly enforced. An employee's failure to comply with the provisions in this paragraph, including the deadlines will render the grievance null and void.
2. **Hearing Officer.** Within fifteen (15) calendar days of receipt of the employee's notice of appeal, the City Manager will appoint a hearing officer who is a licensed New Mexico attorney, or a person experienced in personnel administration.
  - a. The hearing officer shall recuse himself if, for any reason, he cannot afford a fair and impartial hearing to either party. The employee or City may ask to disqualify a designated hearing officer for cause by filing an affidavit of disqualification within ten (10) calendar days of the hearing officer's designation or immediately upon subsequently learning of the grounds for disqualification. The affidavit must state the particular grounds for disqualification. The designated hearing officer shall rule on motions for disqualification.
  - b. No person shall discuss the merits of the appeal with the hearing officer unless both parties or their representatives are present.
3. **Pre-Hearing Conference.** The hearing officer shall schedule and conduct a pre-hearing conference by such method deemed appropriate. Each party shall submit a pre-hearing statement by the date set by the hearing officer, containing the



following information:

- a. A statement of the issues;
  - b. Proposed stipulations of fact;
  - c. A list of witnesses to be called and a summary of their testimony;
  - d. A list of exhibits;
  - e. Requests for discovery;
  - d. Requests for subpoenas; and
  - e. Estimated amount of time needed for the hearing.
4. **Pre-Hearing Order.** The hearing officer shall issue a Pre-Hearing Order which shall contain:
- a. The issue(s) to be heard;
  - b. Stipulations of fact;
  - c. Deadline for disclosure of all witnesses and documentary evidence;
  - d. Deadline for the close of all discovery;
  - e. Deadline for filing pre-hearing motions and the manner in which they will be heard or acted upon;
  - f. Deadline for filing proposed findings of fact and conclusions of law; and
  - g. Hearing location and date, which may be continued only for good cause.
5. **Rules of Procedure for Hearing**
- a. All hearings shall be open to the public unless the parties mutually agree to the contrary.
  - b. The hearing officer shall follow the evidentiary standards for administrative hearings.
  - c. Either party may be represented at the hearing by a person of their choosing provided

the representative has submitted a written entry of appearance prior to the hearing.

- d. The City shall be entitled to have an employee representative in the hearing room during the course of the hearing.
- e. The hearing officer shall clear the hearing room of all witnesses if requested by either party prior to commencing the hearing.
- f. The City shall present its evidence first.
- g. Oral evidence shall be taken only under oath.
- h. The hearing shall be conducted in an orderly manner.
- i. The hearing officer may admit evidence if it is evidence upon which reasonable persons are accustomed to rely on for the conduct of serious affairs. The hearing officer may exclude immaterial, irrelevant or unduly cumulative testimony.
- j. The hearing officer may take administrative notice of those matters of which the courts of this State may take notice.
- k. A record of the hearing shall be made by a certified court reporter arranged by the City. If a certified court reporter is utilized, the City shall pay only the court reporter's appearance fee. No transcript shall be produced, unless one is requested by a party and such requesting party shall be responsible for the cost of the transcript.

**6. Appeal Hearing Decision**

- a. The hearing officer shall prepare a written decision upholding, reversing or modifying the disciplinary action within thirty calendar (30) days of the conclusion of the hearing or at a time mutually agreed upon by the parties at the close of the hearing. The decision shall contain findings of fact and conclusions of law. The decision shall be served on the parties by electronic mail, fax or mail. The employee or the City may appeal the hearing officer's decision to district court within 30 days after the date of the hearing officer's decision pursuant to SCRA 1-074.
- b. In the event the hearing officer has reversed or modified the disciplinary action, the hearing officer shall have the authority to only award back wages and City contributed benefits to the employee. The hearing officer shall have no authority to grant attorney fees, costs or interest in

connection with any award of back wages or benefits. In the event the hearing officer awards back wages, the employee shall file a sworn statement of gross earnings and unemployment compensation since the effective date of the disciplinary action. The hearing officer shall offset earnings and unemployment compensation received during the period against the back wages awarded. After a written decision is issued, the hearing officer shall retain jurisdiction of the case for the sole purpose of resolving any disputes regarding back wages and City contributed benefits.

- c. The City shall pay the hearing officer's fees and expenses.
- d. Each party shall pay all of its own attorney fees and costs.

## **SECTION 14: EQUAL EMPLOYMENT OPPORTUNITY**

**14.1 Statement of Purpose.** The City is an equal opportunity employer and does not practice nor tolerate unlawful discrimination, whether on the basis of race, color, national origin, religion, age, sex, ancestry, physical or mental handicap, serious medical condition, sexual orientation, spousal affiliation, gender identity or other legally protected status in the consideration of an individual for employment, duration of employment, compensation, terms, conditions, or privileges of employment.

**14.2 Reasonable Accommodations.** A reasonable accommodation is a modification or adjustment to a job or to the work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions. This also includes adjustments to ensure that a qualified individual with a disability has rights and privileges in employment that are equal to those of nondisabled employees. When an applicant or employee makes it known they need a modification or adjustment, the supervisor or official to whom the request is made will consider this as a request for a reasonable accommodation and promptly forward the request to the City Manager. There may also be circumstances where it is obvious that an employee has an impairment that is impacting the employee's ability to perform the essential functions of the job. In such instances, the supervisor should promptly refer the matter to the City Manager.

When an individual with a disability can be reasonably accommodated without creating an undue hardship or causing a direct threat to workplace safety, he or she will be given the same consideration for employment as any other applicant. Applicants who pose a direct threat to the health, safety and well-being of themselves or others in the workplace when the threat cannot be eliminated by reasonable accommodation will not be hired.

The City will reasonably accommodate qualified individuals with a disability so that they can perform the essential functions of a job unless doing so causes a direct threat to these individuals or others in the workplace and the threat cannot be eliminated by reasonable accommodation or if the accommodation creates an undue hardship to the City. Contact the City Manager with any questions or requests for accommodation.

All employees are required to comply with the City's safety standards. Current employees who pose a direct threat to the health or safety of themselves or other individuals in the workplace will be placed on leave until a decision is made in regard to the employee's immediate employment situation.

Individuals who are currently using illegal drugs are excluded from coverage under this policy.

**14.3 Discrimination and/or Retaliation Prohibited.** Any employee with concerns or issues about any type of discrimination and/or retaliation in the workplace shall bring these issues to the attention of their supervisor, Department Head, or the City Manager as soon as they occur so that they may be appropriately investigated, documented, and corrected. By the provisions of this policy and any other applicable provisions of law, employees of the City of Rio Communities are guaranteed that they can raise concerns and make reports without fear of reprisal. Anyone found to be engaging in any type of unlawful discrimination or reprisal against an employee for reporting discrimination prohibited under this policy will be subject to disciplinary action by the City, up to and including termination of employment.

#### **14.4 Management Responsibility**

1. Any supervisory or management level staff who has been notified of an alleged violation of the City's equal employment opportunity policy must take immediate action to stop such violation and report the allegation to the City Manager and/or Mayor immediately.
2. The City Manager shall assume the responsibility for equal employment opportunity laws and regulations and is designated to assist and counsel Department Heads and investigate and resolve internal complaints of employment discrimination filed by City employees or employment applicants. The City Manager may, in his discretion, refer a complaint to a third-party investigator when deemed necessary.
3. The City Manager shall be the referral officer for the City to receive notice of alleged unlawful employment practices from the equal employment opportunity commission or other appropriate federal or state agency. The City Manager shall

notify the Mayor, City Council, and the City Attorney upon receipt of any complaints alleging violations under this section.

**14.5 Applicant Complaints.** Any job applicant, who has been denied employment with the City of Rio Communities and believes they have been denied employment on the basis of their race, religion, creed, color, ancestry, or national origin, or to age, sex, or physical or mental disability, may request that the City Council initiate an investigation into this matter.

**14.6 Communication.** The Equal Employment Opportunity policy shall be posted on City bulletin boards and communicated to employees during new hire orientation, and by other means as determined to be appropriate.

## **SECTION 15: DISCRIMINATION AND HARASSMENT PREVENTATION**

**15.1 Statement of Purpose.** The City of Rio Communities strives to provide a place of employment free of discrimination and harassment based on sex, race, religion, color, age, ancestry, national origin, sexual orientation, gender identity, genetic information, serious medical condition, disability, spousal affiliation, status as a veteran, or any other legally protected status as defined in Title VII of the Civil Rights Act of 1964 and the New Mexico Human Rights Act. All employees and job applicants are entitled to a work place or recruitment process that is free from discrimination and/or harassment. Every City employee has a responsibility to prevent discriminatory harassment (including sexual harassment) from occurring.

Discriminatory harassment within the workplace will not be tolerated. All employees are prohibited from engaging in discriminatory harassment of any other employee or other persons in the course of, or in connection with employment. Any employee, including a supervisor or member of management, who is found to have engaged in any form of discriminatory harassment in the course of his employment will be subjected to appropriate disciplinary action, up to and including termination of employment. Disciplinary action will vary depending on the severity of the infraction. The desired standard for City employee conduct and behavior is one of cooperation, mutual respect, and professionalism.

**15.2 Scope.** This policy applies to City officials, Department Heads, supervisors, employees, non-employees, and volunteers subject to the City's control and authority and shall be actively enforced by City management.

### 15.3 Definitions

1. Discrimination in the workplace. Employment action or employment conditions that result in unfair or unequal treatment of an individual employee or group of employees based on their membership in a protected class: race, religion, sex, age, national origin, ancestry, disability, spousal affiliation, pregnancy, sexual orientation, gender identity, serious medical condition, or other legally protected class.
2. Harassment. Any unwelcome or unwanted conduct or behavior that is based on race, color, sex, religion, national origin, ancestry, spousal affiliation, sexual orientation, gender identification, serious medical condition, age, disability, or other legally protected class and is pervasive or severe and offensive both to the recipient of the conduct and to a reasonable person.
3. Sexual Harassment. A form of harassment that consists of unwelcome and unwanted sexual advances, requests for sexual favors, communication of a sexual nature or other verbal or physical conduct of a sexual nature that is pervasive or severe which adversely affects a person's employment relationship or working environment and is offensive both to the recipient and to the reasonable person.
4. Retaliation. The act of attacking in return, as in taking revenge, reciprocating, settling a score or getting even; negative or adverse action taken against an employee and/or witness because they report discriminatory harassment or provide information related to such complaints.

**15.4 Reporting Requirements.** It is everyone's responsibility to prevent discrimination and discriminatory harassment in the workplace. Any employee who believes that he has either witnessed or been subjected to any form of discrimination, harassment or retaliation on the job is strongly encouraged to report such discrimination, harassment (including sexual harassment) or retaliation immediately to any supervisor or Department Head, or the City Manager. Any supervisory or management level staff who has been notified of alleged discrimination must take immediate action to stop such behavior and report the behavior to the City Manager or Mayor immediately. Retaliation against an individual who in good faith reports or provides information in an investigation about behavior or conduct that may violate the policy is against the law and will not be tolerated. Failure to report allegations of discrimination, harassment (including sexual harassment) or retaliation by supervisory or management level staff may subject them to disciplinary action, up to and including termination.

**15.5 Investigation and Findings.** Any reported violation of this policy will be thoroughly and fairly investigated. All employees shall, if asked, cooperate in the investigation or resolution of harassment complaints. The City will take appropriate disciplinary action based on the findings of the investigation. An employee whose behavior, conduct, or action is determined to be in violation of this policy will be subject to disciplinary action, up to and including termination.

**15.6 Retaliation Prohibited.** Retaliation against an individual who makes a report of discrimination, harassment (including sexual harassment) or testifies as a witness to a complaint is a serious violation of this policy and should be reported immediately. Any person found to have retaliated against another for reporting discrimination, harassment (including sexual harassment) or testifying as a witness to a complaint shall be subject to disciplinary action, up to and including dismissal.

## **SECTION 16: OFF-DUTY USE OF CANNABIS BY NON-SAFETY SENSITIVE POSITIONS OR FEDERALLY MANDATED EMPLOYEES NOT PROHIBITED; EXCEPTION FOR MEDICAL CANNABIS.**

**16.1 Drug And Alcohol Abuse Policy.** Drug and Alcohol-Free Workplace. The City of Rio Communities does not tolerate the abuse of drugs and/or alcohol and strives to maintain a workplace that is free from the effects of drug and alcohol abuse. Employees are prohibited, under the Drug-Free Workplace Act of 1988 from the illegal use, sale, dispensing, distribution, possession, or manufacture of illegal drugs, controlled substances, narcotics, or alcoholic beverages on City premises or work sites. Employees are further prohibited from possessing, distributing, selling, or manufacturing illegal drugs outside of work hours. This does not include those activities which are authorized under the Cannabis Regulation Act (NMSA §26-2C-1 through § 26-2C-42) or the Lynn and Erin Compassionate Use Act (NMSA 1978 § 26-2B-1 through §26-2B-10), except to the extent that the City of Rio Communities has provided otherwise in this Policy. Employees violating this policy and any provision herein are subject to disciplinary action, up to and including termination. Employees shall never operate City vehicles/equipment or their own personal vehicle on City business if they are impaired and not fit to drive. Impairments can be from abuse of alcohol, drug use (illegal or legal, prescription, and over-the-counter medications), sleepiness/fatigue, headaches, vision problems, medical conditions, etc. When on-duty operation of City vehicles/equipment is necessary or job performance is impaired, it is the Employee's responsibility to immediately notify their Department Director and/or Supervisor when the Employee is impaired and not fit to drive or operate City vehicles/equipment or perform the Employee's duties. Department Directors/Supervisors must immediately suspend the Employee from the operation of any vehicles/equipment or other safety sensitive work responsibilities and immediately notify the HR Director in these situations. Department Directors/Supervisors must immediately suspend any Employee from performing his or

her duties when the Employee is or appears to be impaired. Failure to report the use of such drugs or other substances which can impair job performance will result in disciplinary action. Except where excluded in this Policy, the term “drug” includes “cannabis” as that term is defined in the Cannabis Regulation Act.

**16.2 Sale, Use and Possession of Drugs.** Any Employee who illegally sells, purchases, or transfers drugs or any illegal substance, on or off duty, shall be terminated. Any Employee who, while on duty, possesses drugs or any substance in Schedules I and II of the Controlled Substances Act, Section 30-31-41 NMSA 1978, without a valid prescription or as otherwise authorized by law, shall be terminated. Any Employee who is caught consuming alcohol or using drugs, including medical cannabis, while on duty shall be terminated.

Cannabis is a controlled substance under both federal and state law. The Cannabis Regulation Act (NMSA §26-2C-1 through § 26-2C-42) permits various activities with respect to the possession, sale and use of cannabis, even though such activities are currently prohibited by the federal Controlled Substances Act (“CSA”) (21 U.S.C. § 801 et seq.). For purposes of this Policy, whenever any action, drug or substance is characterized as illegal, it shall not be deemed to include the purchase, sale or possession of cannabis or a cannabis product from a licensed cannabis retailer or cannabis server under the provisions of the Cannabis Regulation Act or the sale, purchase, possession or use of cannabis by a qualified patient or primary caregiver under the Compassionate Use Act. However, under no circumstances may cannabis be purchased, sold, used or possessed by any Employee on City Property, while operating City vehicles/equipment, or while on duty.

**16.3 Employee Cooperation.** All Employees are expected to cooperate in the testing process. Any conduct that clearly obstructs the testing process such as tampering with the specimen, or the testing procedure will result in termination of employment.

**16.4 Call Back Duty.** Employees called back to work at a time when they are off from work and not on On-Call duty status, and who have been consuming intoxicants, including alcoholic beverages, cannabis (including medical cannabis), or any other controlled substance whether or not legal, shall report this usage to the person calling them to return for special duty. The person receiving the notification from the Employee shall promptly notify the requesting Supervisor/Department Director so that another Employee may be contacted to return for special duty.



## **16.5 Employee Categories.**

1. **Federally Mandated Employees.** Federally mandated Employees are those working under the rules of the United States Department of Transportation (DOT) and/or the Federal Motor Carrier Safety Administration (FMCSA). At the City of Rio Communities these are Employees whose job requires a Commercial Driver's License (CDL). Federally mandated Employees are subject to pre-employment, post-vehicle accident, random, and reasonable suspicion testing following the rules and procedures established by DOT and FMCSA. There is no exception for any Employee who uses medical cannabis pursuant to the Lynn and Erin Compassionate Use Act or under the Cannabis Regulation Act.
2. **Safety Sensitive Employees.** Employees that are in designated Safety Sensitive positions are subject to pre-employment, post-accident, post-vehicle accident, random and reasonable suspicion testing. Designated Safety Sensitive positions include, but are not limited to, law enforcement personnel, animal control, fire Department employees, public works and road employees, facilities services employees, community and senior center employees and others as designated by the City Administrator. These Employees are subject to pre-employment, post-accident, random, and reasonable suspicion testing following the rules and procedures established by DOT and FMSCA. There is no exception for any Employee who uses medical cannabis pursuant to the Lynn and Erin Compassionate Use Act or under the Cannabis Regulation Act.
3. **Administrative Employees.** All other City Employees are subject to post-offer/ pre-employment, post-accident, post-vehicle accident, and reasonable suspicion testing.

**16.6 Drug Testing.** The City of Rio Communities has a vital interest in maintaining safe and efficient working conditions for its Employees and citizens. Employees under the influence of alcohol and/or drugs pose serious safety and health risks not only to the user but also to those in contact with the user. Therefore, the City of Rio Communities will conduct Drug and Alcohol tests in compliance with accepted testing standards in the following circumstances:

1. **Post-Offer Testing/Pre-Employment**

2. Post-Accident Testing
3. Post-Vehicle Accident Testing
4. Reasonable Suspicion Testing
5. ***Random Testing***

Results will be reported to the Human Resources Director after review and certification by the Medical Review Officer (MRO).

### **16.7 Categories for Drug and/or Alcohol Testing.**

1. Post-Offer/Pre-Employment Testing. Post offer but prior to employment, the applicant or Employee must submit to testing for alcohol and controlled substances. The City shall not employ an individual if they refuse to submit to the drug/alcohol testing or the results indicate a positive drug test result or breath alcohol greater than .04. For positions which are not subject to federally mandates (DOT regulated) or deemed safety sensitive positions, testing for cannabis will not be included.
2. Post-Accident Testing. After an accident/incident resulting in any on the job injury which requires medical attention for the Employee(s) and/or any other person involved, and/or causes the Employee to lose time from work. It is also considered an accident when City of Rio Communities' property has been damaged. When an Employee is required to submit to a drug and/or alcohol test, the Employee will be driven to the collection site by the Department Director or Supervisor. Refusal to submit to the drug/alcohol test will be regarded the same as a positive drug test result or breath alcohol greater than .04 and shall be deemed cause for termination.
3. Post-Vehicle Accident Testing. After a vehicle/motorized equipment accident /incident in which an Employee is involved in driving or operating a City vehicle/motorized equipment and the accident involves a fatality, or the Employee receives a citation under state or local law for a moving traffic violation arising from the accident; or if any vehicle has to be towed from the scene; or if any individual involved in the accident has to be treated for injuries away from the accident site. When an Employee is required to submit to a drug and/or alcohol test, the Employee will be driven to the collection site by the Department Director

or Supervisor. Refusal to submit to the drug/alcohol test will be regarded the same as a positive drug test result or breath alcohol greater than .04 and shall be deemed cause for termination.

4. Reasonable Suspicion Testing. An Employee shall be required to undergo a drug/alcohol test if there is a reasonable suspicion that the Employee is under the influence of alcohol or drugs, including cannabis. The Department Director or Supervisor will drive the Employee to the collection site for testing. Refusal to submit to a drug or alcohol test shall be deemed cause for immediate termination. Circumstances which constitute a basis for determining “Reasonable Suspicion” may include, but are not limited to:
  - a. Physical signs
    - i. Bloodshot eyes/dilated pupils.
    - ii. Slurred speech.
    - iii. Unsteady walk/uncoordinated movements/poor reflexes.
    - iv. Shakes or tremors.
    - v. Unexplained sweating or shivering.
    - vi. Fidgeting/inability to sit still.
    - vii. Sleeping at work or difficulty staying awake.
    - viii. Unusual body or breath odor (i.e, odor of alcohol on breath).
    - ix. Deterioration in appearance/grooming.
  - b. Behavioral signs
    - i. Attendance problems – tardiness, pattern of absences or excessive absenteeism.
    - ii. Decline in performance/productivity.
    - iii. Acting withdrawn from others, secretive.
    - iv. Money problems or borrowing or stealing money.
  - c. Psychological signs
    - i. Unexplained changes in personality or attitude.
    - ii. Sudden mood changes, irritability, angry outbursts, or inappropriate laughing.
    - iii. Unexplained fear or paranoia.
    - iv. Inability to focus or concentrate.
  - d. Information provided by a reliable and credible source (with written documentation of when and how information was obtained/observed).
  - e. Direct observation of drug or alcohol use, including the use of cannabis.

- f. Employees who believe that another City of Rio Communities Employee is under the influence of alcohol or drugs, should immediately report the incident to a Supervisor/Department Director. If they are not available, or in the event of immediate danger, contact local law enforcement.
  - g. The City of Rio Communities Supervisor/Department Director will respond immediately to any report of suspected intoxication or drug/alcohol use on City premises/worksites during working hours, by investigating the report, promptly documenting the basis for the “reasonable suspicion” test, enforcing the “reasonable suspicion” drug testing procedure, and taking appropriate corrective and/or disciplinary action up to and including termination and in accordance with the City’s disciplinary procedures.
5. Random Testing. Federally mandated and safety sensitive Employees (as defined above) are subject to random testing complying with the rules and procedures for random testing established by DOT and FMSCA.
6. Random Testing Procedures: The City will require the following groups to be randomly drug tested as follows:
- a. DOT regulated Employees: 50% of workforce per annum for controlled substances; 10% for alcohol.
  - b. Safety Sensitive Employees: 25% of workforce per annum.
  - c. Testing for controlled substances shall include testing for cannabis.

**16.8 Positive Test Results.**

- 1. Unclassified, probationary, or temporary Employees who test positive for drugs or alcohol will be immediately terminated. This includes an Employee who is not subject to DOT regulation and whose position is not deemed safety sensitive, or an employee who is a qualified patient under the Lynn and Erin Compassionate Use Act, if that employee (i) tests positive for cannabis: (ii) testing is required as a result of an accident, including a vehicular accident, or based upon reasonable suspicion, and (iii) it is determined that the employee was impaired by cannabis at the time of the accident or was under the influence of cannabis while on duty.
- 2. A classified Employee who tests positive. If an employee tests positive for drugs or alcohol, the employee will be suspended from employment without pay. To

avoid dismissal the employee will be required to successfully complete an approved drug/alcohol rehabilitation program. The employee shall be responsible for paying the cost of the rehabilitation program unless the employee has insurance coverage for such treatment. Upon the employee's return to work after completion of the drug/alcohol rehabilitation program, the employee shall be required to test for alcohol/drugs for a period of two (2) years. If the employee tests positive during this testing period, the employee shall be subject to disciplinary action up to, and including, dismissal. If the employee successfully completes this two (2) year testing period, all records of the previous tests and related case documentation shall be destroyed after three (3) years from the initial positive test.

3. This includes an employee who is not subject to DOT regulation and whose position is not deemed safety sensitive, or an employee who is a qualified patient under the Lynn and Erin Compassionate Use Act, if that employee (i) tests positive for cannabis: (ii) testing is required as a result of an accident, including a vehicular accident, or based upon reasonable suspicion, and (iii) it is determined that the employee was impaired by cannabis at the time of the accident or was under the influence of cannabis while on duty. Employees who elect to enroll in the EAP may use their accumulated personal leave to seek treatment. When all authorized leave is exhausted, they will be placed in a leave without pay status. Any Employee who is not cleared to return to work within ninety (90) calendar days of referral to the EAP will be terminated.

**16.9 Voluntary Self-Referral.** The City strongly encourages any Employee who believes or suspects that they may have a problem with drugs and/or alcohol to seek help from the Human Resources Department prior to any mandated drug and alcohol testing.

Voluntary self-referrals may use personal leave and unpaid administrative leave in order to complete the EAP. Self-referrals must be cleared to return to duty within ninety (90) calendar days of entering the EAP program or they may be terminated.

1. **Non-Safety Sensitive Employees.** Non-Safety Sensitive Employees will be referred to the EAP for evaluation. Such Employees are expected to be at work and performing satisfactorily unless they have been removed from duty by the EAP for treatment.
2. **Federally mandated and Safety Sensitive Employees.** Federally mandated and Safety Sensitive Employees will be removed from duty, placed in an appropriate leave status, and referred to the EAP for evaluation. Such Employees may be assigned to a non-federally mandated or safety sensitive job, if available and

approved by the EAP. If assigned to such a position, the Employee is expected to be at work and performing satisfactorily unless removed from duty by the EAP for treatment.

3. **Mandatory Testing During and After the EAP.** Employees enrolled in the EAP are subject to random drug and alcohol testing. Once an Employee has successfully completed the EAP, they shall be subject to random drug and alcohol testing in the twelve (12) month period following their return to work.

## **SECTION 17: CARE AND USE OF EQUIPMENT AND FACILITIES**

**17.1 Statement of Purpose.** All employees are required to properly maintain and utilize the City of Rio Communities' property. Willful abuse or mishandling of any City property including vehicles and/or technical resources will not be tolerated and may be grounds for disciplinary action up to and including discharge.

1. **City Vehicles.** Some positions in the City require the use of City vehicles. These are City-owned property and must be maintained in a proper fashion. Employees are responsible for maintaining vehicles and reporting problems to their Department Head. Any employee assigned a City-owned vehicle must adhere to procedures established by the City Manager, which may include a defensive driving course. City vehicles may not be used for personal business.
2. **Technical Resources.** The City of Rio Communities' technical resources including any computer, voice mail, fax or e-mail systems, cellular telephones, are provided for use in the conduct of City business and are to be reviewed, monitored and used in that pursuit. Employees may transmit or receive messages in the course of their employment on the City of Rio Communities' computer systems or other technical resources, those messages may be subject to investigation, search, and review. In addition, any electronically stored communications that are received may be retrieved and reviewed without prior notice.
  - a. Employees may access those electronic files or programs that they have permission to enter. Unauthorized copying or use of computer software exposes both the City of Rio Communities and the employee to fines and/or imprisonment. Employees may not load personal software or download software from the Internet onto the City of Rio Communities' computer system and may not copy software from the City of Rio Communities for personal use.
  - b. Employees are responsible for the content of all text, audio, or images that they place or send over the Internet. All messages communicated on the Internet should include the employee's name. No messages may be

transmitted under an assumed name or anonymously.

- c. Any non-business e-mail or other electronic messages must be clearly identified as such in the subject line. Employees may not prepare or review non-business e-mail messages during work time. With regard to computer use, working time is defined as any time an employee is at his workstation and not on a designated break, regardless of whether the break is paid. Employees who encounter messages that are of a personal or non-business purpose during work time are expected to skip the messages and review them only before or after the workday or during designated break time.

## **SECTION 18: ON-CALL REQUIREMENTS AND CALL-BACK PAY**

**18.1 On-Call (Standby) Status.** Department Heads should provide employees who are required to be on-call with a schedule of the time and date that the employee must be on-call. An equitable rotation policy should be followed in requiring employees to be on-call. In addition, the following guidelines apply:

1. The employee is not required while on-call to remain on the City's premises. However, the employee must remain available by telephone or text while off site and respond to any call or message within fifteen (15) minutes.
2. If an emergency requires the employee to return to work, he must do so within one (1) hour of responding to the message.
3. The employee is not required to restrict his activities while on-call, but the employee must remain free of the influence of alcohol or illegal drugs. In addition, the employee should not take any prescription drug that adversely affects his or her ability to safely and effectively perform his or her job duties. If an employee has a medical condition and has concerns about complying with this requirement, the employee should consult with the Department Head.
4. If the employee has a conflict and is unable to be on-call during his or her assigned time, it is the employee's obligation to pre-arrange with his or her immediate supervisor for a replacement to cover the employee's on-call shift.
5. Employees who fail to respond when called and/or who fail to find a replacement may be subject to disciplinary action.

**18.2 Call-Back Pay.** When an unscheduled employee accepts management's request to

report to work, the employee is in call-back status. The employee will be paid as directed by the Fair Labor Standards Act (FLSA). Non-exempt employees who are called to report to work on their regular day off or that have been recalled to work after having left the employer's premises shall be guaranteed a minimum of two (2) hours of pay at the applicable straight time or overtime rate, as applicable.

## **SECTION 19: ON-THE JOB INJURY OR ILLNESS/WORKERS' COMPENSATION**

**19.1 On-the-Job Injury or Illness.** Any employee who suffers an on-the-job injury or illness is required, unless incapacitated, to immediately prepare and submit a Notice of Accident form to their supervisor or Department Head. If the employee is unable to do so, the supervisor or Department Head will fill out the Notice of Accident form. An employee who suffers an on-the-job injury or illness that requires immediate emergency treatment and returns to work on the same workday will not be charged personal leave. The supervisor or Department Head shall submit the Notice of Accident form and the required Supervisor's Investigation Report form to the City Manager or designee within seventy-two (72) hours. The injured or ill employee must sign a Worker's Authorization for Disclosure of Protected Health Information for Workers' Compensation Purposes form, Doctor Selection Notice and submit to the City Manager or designee. The City Manager or designee will send the forms (the Notice of Accident, and a New Mexico Workers' Compensation Administration – Employer's First Report of Injury or Illness) to the City's Workers' Compensation insurer for evaluation. Workers' Compensation benefits will be awarded as provided by law. Post-Accident drug testing may be required as set forth in the City's Drug and Alcohol Policy.

### **19.2 Workers' Compensation Process**

1. Employees injured on the job may choose any physician for their initial evaluation and treatment.
2. Employee and supervisor or Department Head must complete all necessary forms and submit to the City Manager or designee as soon as possible.
  - a. If the employee is unable to work, the first seven (7) days after filing a Workers' Compensation claim are considered a waiting period during which no Workers' Compensation benefits are paid. The injured or ill employee will have to use personal leave or leave without pay, if necessary, during this period. After seven (7) days out of work, an injured or ill employee that has been approved for Workers' Compensation benefits may elect to be paid 66 2/3% of their average gross pay for the preceding twenty-six (26) weeks or continue using personal leave. The employee's decision to receive workers' compensation benefits or to use



personal leave while out of work must be designated on an Election of Benefits Form forwarded to the City Manager or designee.

- b. As permitted by law, the City's Workers' Compensation insurer can require an injured employee to be seen another designated physician for reevaluation and treatment.

## **SECTION 20: CONFLICT OF INTEREST**

- A. Employees must disclose promptly any circumstance that might constitute a conflict of interest or appear to be a conflict of interest. If such a situation develops, the employee must immediately notify his Department Director and complete a City of Rio Communities Disclosure Statement Form, pursuant to the New Mexico Governmental Conduct Act (NMSA 1978, Section 10-16-1 *et seq.*). An employee or public official of the City is required to make disclosure of potential conflicts of interest with regards to outside employment, familial relationships, and disclosure of substantial business interests. In addition, employees must complete a Disclosure Statement Form every twelve (12) months. Failure to complete the Disclosure Statement Form or failure to provide complete and accurate information may subject an employee to disciplinary action and may result in any authorization to engage in self-employment, supplemental or outside employment being terminated.
- B. No employee shall:
  1. Engage in any business or transaction, have a financial or other personal interest, direct or indirect, accept private employment or other public employment, or render services for private interest, which is incompatible with the proper discharge of the employee's responsibilities, which gives the appearance of impropriety, or could tend to impair his independence of judgment or action in the performance of his duties.
  2. Accept any gift, whether in the form of money, service, loan, thing, or promise, from any person that could tend to impair the employee's independence of judgment or action in the performance of his duties.
  3. Disclose confidential information concerning property, government or affairs of the City without proper legal authorization or use such information to advance the financial or other private interest of self or others.

4. Accept any gift, whether in the form of money, service, loan, thing or promise, from any person which to his knowledge is interested directly in any manner whatsoever in business dealings with the City; provided however, that any such employee who is a candidate for public office may accept campaign contributions and service in connection with any such campaign.
5. Represent the private interests of any third-party in any action or proceeding before any Board or Committee before which the employee appeared on behalf of the City while an employee of the City or within one year of terminating his employment with the City.
6. Participate in the selection, in the negotiation or the making of any contract with any business or entity in which he has a direct or indirect financial interest.