

ORDINANCE 444  
CITY OF SANTA ROSA  
MERIT SYSTEM ORDINANCE

(Adopted: 1/12/21)

(Effective: 1/26/21)

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## SECTION 1. GENERAL PROVISIONS

**1.1 PURPOSE.** The purpose of this personnel ordinance is to establish a merit system that provides consistent, basic policies and practices concerning relations between the City of Santa Rosa and its employees. This personnel ordinance further establishes the formal grievance procedure available to classified employees to hear grievances with respect to demotions, dismissals, and suspensions, and provides the method by which formal grievances are decided. The provisions of this personnel ordinance apply to all City employees, except that the provisions governing merit, discipline for cause, and the grievance of disciplinary actions do not apply, to unclassified employees.

**1.2 SCOPE.** Definite rules and regulations cannot be readily formulated for every possible problem and situation. This ordinance serves as a general basis and guide for the proper, efficient, and effective administration of personnel matters for the City of Santa Rosa. The rules contained herein replace and supersede all previously issued personnel rules and regulations applicable to employees of the City of Santa Rosa, including, but not limited, to previous Ordinance No. 330, as last amended in 2013 and Ordinance 286, enacted in 1995.

**1.3 AMENDMENT OF POLICY.** There shall be no resolution or other action of the City council or other City officials which is inconsistent with this ordinance, except by amendment of this ordinance as required by law. The City council reserves the right to amend this merit system ordinance at its discretion.

**1.4 EQUAL EMPLOYMENT OPPORTUNITY POLICY.** The City provides equal employment opportunity to all qualified employees. No employee of the City or prospective employee will be discriminated against based on race, age, religion, color, national origin, ancestry, sex, physical or mental disability or serious medical condition, sexual orientation, or veteran status in consideration for employment, duration of employment, training, transfer, salary, benefits, and other terms and conditions of employment. It is the objective of the City to comply with the requirements of equal employment opportunity as set forth in federal and state laws and to comply with applicable presidential executive orders.

**1.5 PRONOUNS.** All pronouns used in this merit system ordinance include the masculine and feminine and include the singular and plural. The context of this merit system ordinance must be read accordingly.

## SECTION 2. DEFINITIONS

**2.1 ABSENT WITHOUT LEAVE.** Employees who fail to appear for work without authorized leave or who appear for work but are in violation of agency policy governing their readiness for work shall be considered to be absent without leave.

**2.2 ADMINISTRATIVE LEAVE WITH PAY.** Leave with pay granted at the City administrator's discretion for good cause.

**2.3 ANNIVERSARY DATE.** A day twelve (12) months from an employee's date of hire

**2.4 ANNUAL LEAVE.** Leave with pay granted to a classified or qualified appointed employee after accrual at a specific rate.

**2.5 APPEAL.** Written request that a decision of a formal grievance be reconsidered at a further stage in the grievance procedure.

**2.6 APPLICANT.** A person who has made formal application on an official City personnel application form for a position in the City service.

**2.7 APPOINTED EMPLOYEE.** Appointed employees are unclassified, terminable-at-will employees and only include the City administrator, City clerk, chief of police, and City attorney, subject to terms of contract, if any.

**2.8 CLASSIFIED EMPLOYEE.** A full-time or part-time, non-temporary employee who is hired to fill a classified position and has completed the probationary period. Classified employees can only be disciplined for cause and are entitled to all the rights and benefits of this Ordinance.

**2.9 CLASSIFIED POSITION.** A classified position is one whose employees are subject to the City of Santa Rosa's merit system regarding employment, pay and discipline.

**2.10 CITY ADMINISTRATOR.** Except as provided in any employment contract, an appointed position that is subject to this ordinance and reports directly to the Mayor and the City Council. In the event that the City Administrator position is vacant, each City councilor shall supervise two of the City's eight departments, with the assignment of departments to be determined by the City Council by formal vote.

**2.11 CITY BUSINESS.** The performance of duties of a City position at an employee's normal workstation or at a location authorized by the City.

**2.12 COMPENSATORY TIME.** Those hours granted in lieu of overtime pay to a Fair Labor Standards Act (FLSA) nonexempt employee as defined by the FLSA, based on one and one-half (1 ½) hours compensatory time for each hour of overtime actually worked in excess of forty (40) hours in one work week.

**2.13 DISCIPLINE.** A personnel action against a classified employee which negatively affects the employee's responsibilities or pay or both. Discipline includes reprimand, suspension, demotion, and dismissal.

**2.14 DEPARTMENT HEAD.** An employee of the City who has responsibility for supervising and administering a department of City government and who is a classified employee.

**2.15 DISMISSAL.** An action by the City which involuntarily terminates an individual's employment with the City.

**2.16 DUE PROCESS.** The right granted to full-time or part-time classified employee who has completed the probationary period to a pre- and a post-disciplinary hearing, for actions of suspension, demotion, or dismissal.

**2.17 ELECTED OFFICIAL.** An individual elected by popular vote or appointed to fill vacancies in elected office (i.e., Mayor and City councilors).

**2.18 EXEMPT EMPLOYEE.** All executive, administrative, and professional employees as determined by U.S. Department of Labor regulations to the FLSA. Classification as exempt is determined by a position's requirements and responsibilities as described in the Department of Labor Regulations. Exempt employees do not receive additional pay or compensatory time for working more than forty (40) hours per week.

**2.19 FULL-TIME EMPLOYEE.** A full-time- employee is one who works a minimum of forty (40) hours per week.

**2.20 GRIEVANCE.** A complaint of an employee concerning disciplinary actions taken by management (formal grievance) or which results from dissatisfaction with the working conditions or relationships (informal grievance).

**2.21 INSUBORDINATION.** The conduct of an employee constituting defiance, disobedience, dissention, rebelliousness or resistance to supervision.

**2.22 JUST CAUSE.** Any conduct, action or inaction arising from, or directly connected with the employee's work which is inconsistent with the employee's obligation to the City and reflects the employee's disregard of the City's interest. Just cause includes, but is not limited to: abandonment of position, inefficiency; incompetence;

theft; misconduct; negligence; insubordination; violation of City policy or procedure; unauthorized use of City funds, property, facilities, and materials; disruptive behavior; repeated tardiness and excessive absences; or unsatisfactory performance which continues to be inadequate after reasonable efforts have been made to correct the performance problems; or for conviction of a felony or misdemeanor involving moral turpitude as described in the Criminal Offender Employment Act, NMSA 1978, §28-2-1, et seq.

**2.23 LAYOFF (Reduction-in-Force).** The involuntary separation of an employee from City service without fault on the part of the employee due to reorganization, lack of work, or lack of funds.

**2.24 NONEXEMPT EMPLOYEES.** All employees who are covered by the provisions of the FLSA and the regulations interpreting the Act. Nonexempt employees receive overtime pay or compensatory time off for actual hours worked in excess of forty (40) hours per work week.

**2.25 PART-TIME EMPLOYEE.** A position in which the employee works less than 30 hours per week.

**2.26 PERFORMANCE EVALUATION.** The written objective review made by the employee's supervisor of an employee's performance relating to the employee's assigned duties.

**2.27 POST-DISCIPLINARY HEARING.** A formal hearing held after disciplinary action has been taken and conducted by a hearing officer at the request of a classified employee who is aggrieved a suspension or demotion, or a former employee who is grieving dismissal.

**2.28 PRE-DISCIPLINARY HEARING.** A hearing conducted by the City administrator for the benefit of classified employees before the imposition of the disciplinary actions of suspension, demotion, or dismissal.

**2.29 PROBATIONARY EMPLOYEE.** A full-time or part-time employee to fill a classified position who has not yet completed the six (6) month probationary period of employment during which time the employee is terminable-at-will and cannot grieve his termination. All uniformed employees of the department of Public Safety serve a one-year probationary period during which time the employee is terminable-at-will and cannot grieve his termination.

**2.30 PROMOTION.** Transfer to a position requiring higher responsibilities or salary, or both.

**2.31 SERIOUS HEALTH CONDITION** A serious health condition means an illness, injury, impairment or physical or mental condition that involves either inpatient care in a hospital, hospice, or residential health care facility or continuing treatment or supervision by a health care provider.

**2.32 SICK LEAVE.** Leave with pay granted to a classified or qualified appointed employee, after accrual at a specific rate, when personal illness keeps the employee from performing the duties of the position or when an employee's spouse, parent, or child, who is related by marriage or blood, or where a relationship is established by judicial decree, is ill.

**2.33 SICK LEAVE ABUSE.** Use of accrued sick leave for nonmedical problems or for repeated absences on Mondays and Fridays or for calling in sick for the purpose of extending scheduled annual leave or holiday time. Employees abusing sick leave may be disciplined up to and including dismissal.

**2.34 SUSPENSION.** An enforced leave of absence without pay, not to exceed 15 working days, for disciplinary reasons.

**2.35 TEMPORARY EMPLOYEE.** A temporary employee is hired on either a full-time or part-time basis to a seasonal position or to a position established for a period of no more than ninety (90) days. Temporary positions are unclassified.

**2.36 TERMINABLE-AT-WILL.** A terminable-at-will employee is one who fills or temporary position or is one who has not completed his probationary period, or an appointed employee. A terminable-at-will employee serves at the discretion of the City, and his employment can be terminated without cause. A terminable-at-will employee cannot grieve suspension, demotion, dismissal, or other disciplinary actions.

**2.37 TRANSFER.** The transfer of an employee from one department or office department or office in the City service having the same salary. The City may transfer employees from one position to another in accordance with City needs.

**2.38 UNCLASSIFIED EMPLOYEES.** Unclassified employees are those filling appointed or temporary positions, or who are employed to fill a classified position, but have not completed the probationary period.

**2.39 VOLUNTEER.** A volunteer is not a City employee. Volunteer firefighters & technicians may be compensated for each emergency call and for training attendance based on separate City ordinance or by resolution. Volunteers include (1) volunteer firefighters, (2) Emergency Medical Technicians, and (3) non-technical, non-specialized personnel.

### **SECTION 3. EMPLOYMENT STATUS**

#### **3.1 CLASSIFIED EMPLOYEES.**

**3.1 A. Full-time Classified Employee.** A full-time classified employee is one who has completed the probationary period and who normally is scheduled to work at least thirty (30) hours per week. A full-time classified employee is eligible for all rights and benefits provided by the City.

**3.1 B. Part-time Classified Employee.** A part-time employee is an employee who has completed the probationary period, who works less than thirty (30) hours per week. Part-time employees do not accrue vacation or sick leave and are not eligible for insurance benefits.

#### **3.2 UNCLASSIFIED EMPLOYEES.**

**3.2 A. Appointed Employees.** Employees appointed by the Mayor and approved by the City Council include only the City administrator, City clerk/treasurer, chief of police, and City attorney. Appointed employees are unclassified, are terminable-at-will unless subject to an employment contract and cannot avail themselves of the grievance procedures set forth herein but are entitled to all other benefits provided by the City in accordance with this ordinance and are otherwise subject to it.

**3.2 B. Probationary Employee.** The purpose of the probationary period is to evaluate the employee's ability, potential, and performance. A full-time or part-time probationary employee is an unclassified employee who is hired to fill a classified position, but who has not yet completed the six (6) month probationary period of employment or one who is hired to fill a uniformed law enforcement position and has not completed the one-year probationary period during which time the employee is terminable-at-will. Probationary employees may not avail themselves of the grievance procedures set forth in this ordinance but are entitled to all other City benefits provided herein.

1. To determine whether an employee has satisfactorily completed the probationary period, the employee's department head will evaluate the employee's performance and the employee's ability to work with the public, peers, supervisors, and management. A probationary employee must be evaluated in writing at the end of the probationary period before becoming a classified employee. A probationary employee may be evaluated at any other time during the probationary period.
2. An employee hired to fill a law enforcement position or dispatcher serves a one-year probationary period and must obtain the statutorily required certification for the position within one year from the date of hire. If the employee fails to obtain such certification within one (1) year, the employee will be terminated unless the employee is enrolled in the law enforcement academy on the employee's anniversary date. Any employee who completes the law enforcement academy training and fails to



obtain certification will be terminated. Any dispatcher employee is obligated to initially pay the costs of training and certification but shall be reimbursed by the City upon the second anniversary date of their employment with the City. Any law enforcement personnel not employed by the City for more than four years shall reimburse the City for the costs of their law enforcement academy training through deductions from their final paycheck(s).

3. If an employee does not satisfactorily complete the probationary period, the employee will be dismissed. Proposed dismissal of a probationary employee must be discussed with the City attorney and City administrator.
4. An employee who fills a temporary position and is subsequently hired to fill a classified position will serve the required probationary period. The beginning date of the probationary period is the date the employee changes from temporary to probationary status.
5. A former City of Santa Rosa employee rehired after termination or rehired at any time to fill a different position will serve the required probationary period.
6. If an employee is hired to a full-time or part-time, classified position, the first day of work in that position will be used in computing the beginning of the probationary period.
7. If a probationary employee changes positions during the probationary period, he must serve the remainder of the current probationary period or serve a three-month probationary period whichever is greater.

**3.2 C. Temporary Employee.** A temporary employee is hired on either a full-time or part-time basis to a seasonal position or to a position established for a period of no less than three (3) months. A temporary employee is terminable-at-will, is not entitled to grieve personnel actions, does not receive City benefits, and does not accrue leave.

**3.2 D. New Hire.** All new hires regardless of employment status will be brought before the City council for informal introduction at the next regular scheduled meeting or within 30 days of hire, whichever ever may come first. This section excludes seasonal temporary employees.

## **SECTION 4. RECRUITMENT AND SELECTION**

**4.1 RECRUITMENT POSTING PROCEDURE.** The supervising department head will prepare the requisition for any classified position under their supervision to be recruited. The Department Head will prepare the requisition for the City Administrator. The vacancy will first be posted within the City office for fourteen (14) calendar days, then advertised in the local newspaper at least once. The City administrator is responsible for posting and advertising.

**4.2 PERMISSION FOR TRANSFER.** No City employee need seek permission to apply for a job vacancy in any other City office, or department for which the employee is qualified.

### **4.3 APPLICANT RESPONSIBILITY.**

**4.3 A. Submission of Applications.** Applications for employment will be accepted for vacant positions in City hall during normal business hours. Applicants will be considered for positions for which they have applied and are qualified. Applications must be submitted on the employment application form provided by the City.

**4.3 B. Proof of Qualification:** The applicant is responsible for furnishing proof of qualifications or possession of any license, certificate, or degree when these requirements are necessary and set forth in the job description.

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**4.3 C. Immigration Act Compliance.** The applicant is responsible for furnishing proof of identification and right to work in accordance with the Immigration Reform and Control Act of 1986.

**4.3 D. Certification.** The applicant is responsible for signing the employment application and certifying the truth of all statements made in the application.

**4.3 E. Referral to Department Head.** The City administrator will refer qualified applicants to the department head for interviews.

**4.4 SELECTION OF NON-DEPARTMENT HEADS.** The supervising department head will recommend the top candidate to the City administrator. The selection will be based on the following: skills, educational background, experience, personal interview, references, and results of preemployment examinations when required. Recommendations must be in writing and must have supporting documentation. The City administrator will submit the recommendation to the mayor and City council for approval. If the recommendation is rejected by the City administrator or the mayor or City council, the department head must submit another qualified applicant or start the selection process from the beginning.

**4.4 A. Employment Reference Checks.** References provided by the will be checked. Applicants will be asked by the City to sign a written authorization for the City to check references. Only those applicants who sign this written authorization will be considered for the position for which they have applied.

**4.4 B. Physical Examinations and Drug Testing.** Applicants to law enforcement positions or positions requiring commercial driver's license (CDL) have been offered will be required to undergo medical examinations which will include urinalysis, blood testing, and radiographic examinations. Law enforcement officer applicants, to whom jobs are offered, are also required to undergo psychological testing. Preemployment medical examinations must be completed and reviewed before actual employment begins. Offers of employment are contingent upon the physician's statement that the individual can perform the assigned duties and tasks of that position and is drug free, where drug testing been conducted. Positive drug or alcohol tests will result in the withdrawal of the offer of employment. Preemployment medical examinations will be paid for by the City.

**4.5 INELIGIBILITY FOR HIRE AND REHIRE.** An applicant is considered ineligible for hire or rehire by the City of Santa Rosa if the applicant has:

4.5 A. made any materially false statement or omission on the employment application.

4.5 B. did not meet the requirements of the position.

4.5 C. failed to complete preemployment examinations or other requirements directed by the City.

4.5 D. did not meet the Criteria for insurance or bonding as required by the City or state law.

4.5 E. been dismissed from City service as a disciplinary measure.

4.5 F. not been certified by a physician that the applicant can perform the essential functions of the position.

4.5 G. been convicted of a felony within ten (10) years of the date of the application.

4.5 H. Resigned from prior City employment under unfavorable circumstances or without the requisite notice.

The above list is not necessarily exhaustive, and does not include all the reasons which would make an applicant ineligible for hire or rehire

**4.6 INELIGIBILITY OF APPLICANTS FOR POLICE OFFICER.** No person who has been convicted of a felony or a misdemeanor involving moral turpitude, or who has been convicted on a domestic violence charge or a DWI, or who is under indictment, or who is generally known for having a bad character or as a disturber of the peace is eligible to serve as a police officer.

**4.7 RECRUITMENT AND SELECTION OF DEPARTMENT HEADS.** Department heads shall be recruited in accordance with Section 4.1, above. Department heads shall be selected by the City administrator with approval by the Mayor and City Council based on his or her training, administrative experience, familiarity with the City's operations, and other related administrative qualifications required for the office.

## **SECTION 5. CHANGES IN EMPLOYMENT STATUS**

**5.1 PROMOTION.** City employees are encouraged to take advantage of promotional opportunities and apply for higher paying positions for which they qualify, and to obtain certifications relevant to their employment. The Mayor shall recommend any raises on the basis of performance or such certification. The City Council shall approve all raises.

**5.2 DEMOTION.**

**5.2 A.** An employee may be demoted by the City administrator as a disciplinary measure.

**5.2 B.** An employee may be demoted as a non-disciplinary measure to a vacant position for which the employee is qualified when the employee would otherwise be terminated because the employee's position is being abolished due to a lack of funds or lack of work, and there are no appropriate vacancies at the same level; when the employee does not possess the necessary ability to render satisfactory performance in the position presently held.

**5.2 C.** An employee may voluntarily request a demotion.

**5.2 D.** Demoted employees will receive a reduction in pay.

**5.2 E.** Only demotions as a disciplinary measure are subject to grievance rights in this ordinance. Demotions for lack of funding or lack of work are not subject to grievance rights.

**5.3 TRANSFER** Employees may be moved from one position to another at the same rate of pay either voluntarily or involuntarily. An employee may be transferred if it is in the best interests of the City.

**5.4 RESIGNATION.** An employee voluntarily resigning will submit, in writing, a two-week notice of resignation. Failure to provide written two-week notice of resignation may be grounds for refusal of future employment with the City. Unauthorized absence from work for two (2) regularly scheduled working days will be considered a voluntary resignation. The days absent without authorization need not be consecutive to be considered a voluntary resignation.

**5.5 REDUCTION-IN-FORCE.** If it is necessary for the City to reduce the number of City employees because of lack of funds or lack of work, the department head will make the determination of the necessity for layoffs. The reduction will occur in the following manner:

**5.5 A.** Temporary and probationary employees will be laid off before full- or part-time classified employees unless they are filling positions which require specific skills and knowledge.

**5.5 B.** Lay-off of classified employees will be determined by the department head based on the employee's suitability for the jobs remaining, ability to perform available work, and past job performance. If all other criteria are equal, length of service with the City will be considered.

5.5 C. Employees scheduled for lay-off will be, given as much notice as possible. Employees to be laid off may be notified at any time during a pay period and may be allowed to work through the end of that regular pay period or receive pay to the end of that period.

5.5 D. Accrued annual leave will be paid through the final day of employment.

5.5 E. A laid-off employee returning to City employment within six (6) months of the date of lay-off will not serve a probationary period, if hired to the former position.

5.5 F. A laid-off employee, if rehired, within six (6) months of the lay-off, will retain the original date of hire for the purposes of computing sick and annual leave.

**5.6. DISCIPLINE.** All changes in employment status for disciplinary reasons shall occur pursuant to Section 7 of this ordinance.

**5.7 RETURN OF CITY PROPERTY.** At the time that an employee is voluntarily or involuntarily terminated, the employee must return all City property to the appropriate department head, including, but not limited to keys, vehicles, supplies, equipment, and uniforms that may be in the employee's possession. Failure to return all City property will result in a deduction from the employee's final paycheck. The department head must notify the payroll office in writing that the employee returned all equipment before a check will be issued.

## **SECTION 6. CONDITIONS OF EMPLOYMENT**

### **6.1 PERFORMANCE EVALUATION.**

**6.1 A. Probationary Period Evaluations.** The department head will discuss performance with the employee during the probationary period. The employee must receive a written performance evaluation of satisfactory or better at the end of the probationary period before the employee can become a classified employee entitled to all the rights and benefits of that status. Also see Section 3.2(B).

**6.1 B. Other Evaluations.** Non-probationary employees will be evaluated annually in writing at the time of their anniversary date and may also be evaluated under the following Circumstances:

1. A change of status.
2. Recommendation of any type of salary increase, except cost-of-living increases.
3. Unsatisfactory performance.
4. Demotion or suspension.

**6.1 C. Contents of Evaluation.** A performance evaluation will contain an overall appraisal of the employee's performance such as satisfactory, above satisfactory, or unsatisfactory. The performance evaluation will state areas of responsibilities and standards of performance. Performance appraisals become part of an employee's personnel file.

**6.1 D. Unsatisfactory Evaluation.** In the event a classified employee receives an overall evaluation of unsatisfactory, the employee will be provided with written information in the evaluation as to specific areas of deficient performance and steps for improvement and will be warned that failure to meet reasonable performance standards of the position within a set time period, not to exceed ninety (90) days, will result in dismissal. An employee who receives an overall evaluation of unsatisfactory will be reevaluated within ninety (90) days, and, if performance remains unsatisfactory, will be dismissed pursuant to the procedures in this ordinance.

6.1 E. **Employee Rebuttal.** The employee may submit a rebuttal statement to the performance evaluation which will be attached to and become a part of the performance evaluation. The rebuttal must be submitted within 10 days of the evaluation and will become part of the employee's personnel file.

**6.2 PROHIBITED POLITICAL ACTIVITIES.** All elected officials and employees are prohibited from:

6.2 A. Using official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office, or for any other political purpose.

6.2 B. Directly or indirectly coercing, attempting to coerce, commanding, or advising a City officer or employee to pay, lend, or contribute anything of value to a party, committee, or organization, agency, or person for a political purpose.

6.2 C. Threatening to deny promotions to any employee who does not vote for certain candidates, requiring employees to contribute part of their pay to a political fund, influencing subordinate employees to buy tickets to political fundraising events and similar events, advising employees to take part in political activity and matters of a similar nature.

6.2 D. Engaging in political activity while on duty or on City property.

**6.3. NEPOTISM.**

6.3 A. **Definition of Nepotism.** Nepotism, for purposes of this personnel ordinance, is defined as the practice of giving preferential treatment in areas of employment including, but not limited to, selection, benefit, pay, promotion, and discipline to an employee's near relatives. Near relatives are defined as the employee's spouse, children, parents, siblings, grandparents, grandchildren, aunts, uncles, first cousins, and all like-relations of the employee's spouse, and any former spouse(s), or unrelated persons sharing a spousal relationship. This definition is to cover any person related to the employee by birth, adoption, or marriage.

6.3 B. **Prohibited Practices.** The practice or appearance of nepotism is prohibited. Near relatives will not work in the same department when there is a supervisory relationship between them. All employees who work under the supervision of a near relative at the time this ordinance is adopted will be permitted to continue in that position unless an alternative exists to which the employee can be transferred. Any problems arising from such a situation should be referred to the City administrator for review. Employees cannot fill or be promoted into a position which requires supervision by a near relative.

No elected official or City employee will give employment as clerk, deputy, or assistant, or other class of department employee to any near relative when that person's compensation is six hundred (\$600) dollars or more per year. NMSA 1978, §10-1-10. Any exceptions this rule must be approved by the City-council.

**6.4 CONFLICTS.**

6.4 A. **Conflict Ban.** No employee will engage in any business or transaction or accept private employment or other public employment which is incompatible with the proper discharge of the employee's responsibilities for the City or which gives the appearance of impropriety.

6.4 B. **Outside Employment.** All full-time employees will advise the City administrator in writing of any outside employment in which they are engaged. Upon the request of the City administrator, no employee will continue in outside employment if such employment has a negative impact on the employee's job performance, creates liability for the City, or appears to be a conflict of interest.

**6.5 DISCRIMINATION AND SEXUAL HARASSMENT POLICY.**

6.5 A. **Prohibition of Discrimination and Sexual Harassment.** The City of Santa Rosa is committed to a policy of equal employment opportunity for applicants and employees. Decisions regarding employment,

promotional opportunities, benefits, discipline, and other terms and conditions of employment will comply with state and federal laws prohibiting discrimination in employment.

The City of Santa Rosa does not tolerate discrimination based on an individual's race, color, sex, religion, age, national origin, sexual orientation, mental or physical disability or serious medical condition. The City of Santa Rosa reasonably accommodates job applicants and employees with disabilities. Violations of this policy will subject an employee to disciplinary action up to and including dismissal.

**6.5 B. Harassment is a Form of Discrimination.** The term harassment includes unwarranted discipline, slurs, jokes, other offensive remarks based on an individual's race, color, sex, religion, age, national origin, mental or physical disability or serious medical condition and is a form of discrimination.

**6.5 C. Sexual Harassment.** The Equal Employment Opportunity Commission has adopted guidelines which state that unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes "sexual- harassment" when:

1. submission to the conduct is an explicit or implicit term or condition of an individual's employment.
2. the-submission to or rejection of the conduct by an individual is the basis for any employment decision affecting that individual; or
3. the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. A hostile work environment may be one where inappropriate touching occurs, crude or vulgar language is used, jokes of a sexual nature are told, comments are made that demean an individual based on gender, unwelcome nicknames, such as honey or babe are used, or photographs, calendars, magazines, books, etc. of nude or partially nude individuals are disseminated.

**6.5 D. Discrimination and Sexual Harassment Complaint-Procedure.** Any employee who feels that she or he has been the subject of discrimination or sexual harassment by anyone, including nonemployees, should follow the procedure in bringing the matter to the City's attention:

1. The employee should promptly bring the matter to the attention of the City administrator. If the complaint is against the City administrator, the matter should be promptly reported to the mayor. This report may be oral or written.
2. The mayor or City administrator will advise the person who allegedly engaged in the discrimination or sexual harassment of the charge and the mayor or City administrator will conduct an investigation promptly and impartially. The complaint and investigation will be kept as confidential as possible.
3. After the investigation, the mayor or City administrator will determine whether discrimination or sexual harassment has occurred. The people involved will be notified of the decision.
4. If a determination is made that discrimination or sexual harassment has occurred, appropriate disciplinary action, which may include discharge, will be taken. The severity of the discipline will be determined by the degree and/or frequency of the offense.
5. Employees who bring a complaint of discrimination or sexual harassment to the attention of the mayor or City administrator, or those who assist another in bringing such a complaint will not be retaliated against.

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6. Nothing in these procedures prohibits the employee from filing a complaint directly with the Federal Equal Employment Opportunity office or the New Mexico Human Rights Division. These avenues should be used when the employee feels that the employee cannot obtain appropriate relief within the steps as explained above. However, employees are encouraged to seek consultation with the mayor or City administrator before filing a formal complaint of discrimination or sexual harassment with an administrative agency.

**6.6 DRUG TESTING POLICY** - The City of Santa Rosa is committed to the goal of a drugfree workplace in compliance with the Drug-Free Workplace Act of 1988.

**6.6 A. Prohibited Activities.** The use of controlled substances, drugs, prescribed and nonprescribed, or alcohol is a concern to the City of Santa Rosa because it may interfere with job performances, conduct, attendance, safety, or when it is a violation of the law. The unlawful manufacture, distribution, possession, acting under the influence, or use of a controlled substance or alcohol by an employee while on City premises or while on City business is prohibited. Conducting City business, which includes, but is not limited to, driving vehicles or operating City equipment, while under the influence of alcohol, controlled substances, or drugs is strictly prohibited. Engaging in any of these prohibited activities will result in disciplinary action up to and including dismissal from employment. However, the City will pursue rehabilitative alternatives to discipline when appropriate, depending in part on the employee's willingness to seek such rehabilitation.

**6.6 B. Preemployment Drug Testing.** Once an individual has been selected to fill a vacant position as a law enforcement officer, an Emergency Medical Services provider, or a position requiring a commercial driver's license (CDL), including temporary positions; the employee will be tested for alcohol or drugs when he reports for his preemployment medical examination. A confirmed positive test result is grounds for revoking the job offer.

**6.6 C. Reasonable Suspicion Testing.** Any City of Santa Rosa employee will be tested for alcohol and drugs if the department head or the City administrator has reasonable grounds to suspect that the employee is engaging in the use of drugs or alcohol on the job or is reporting to work under the influence of drugs or alcohol. Reasonable suspicion includes, but is not limited to, the following:

1. Job accidents requiring medical treatment or causing damage to property, including City property or persons, where the employee is a contributing factor to the accident.
2. Evidence of alcohol or drugs or drug paraphernalia discovered at the employee's workplace or in a City vehicle.
3. Any employee showing signs of erratic behavior, changes in mood, altered appearance or speech patterns, dilated or constricted pupils, glazed stare, poor concentration, difficulty walking, needle marks, smell of alcohol on breath and person, or an increase in absenteeism, tardiness, and deterioration of work performance.
4. A report by a reliable source of drug use, distribution, or possession of alcohol or drugs in the workplace.

**6.7 REFUSAL TO SUBMIT TO DRUG TESTING.** Refusal by the employee to submit to drug testing based on reasonable suspicion will be grounds for dismissal.

**6.8 RANDOM DRUG TESTING.** Random drug testing for alcohol and controlled substances applies to those employees carrying firearms, to safety-sensitive positions including firefighting and emergency medical services personnel, and to those employees who fill positions requiring a CDL and are subject to the federal Department of Transportation (DOT) regulations. Twenty-five (25%) percent of these employees will be randomly tested for alcohol each year and fifty percent (50%) for controlled substances each year. For more information on the DOT

regulations contact the City administrator. Any employee who is subject to random testing and who refuses to be randomly tested will be dismissed.

**6.9 POSITIVE RESULTS AND DRUG TESTING.** The guidelines established by the Department of Health and Human Services will be used to determine whether an employee tests positive. Any employee who tests positive for drugs or alcohol will be dismissed.

**6.10 RETESTING.** An employee who tests positive on a drug test may elect to have, at the employee's expense, a retest of the original sample, provided the request is made in writing within twenty-four (24) hours of the employee receiving notice of a positive test result. The City will pay for the retest only if the retest is negative.

**6.11 CONFIDENTIALITY.** No laboratory reports or test results will appear in the employee's personnel file unless they are a part of a disciplinary action but will be placed in a locked file.

**6.12 PRESCRIPTION OR OVER-THE-COUNTER MEDICATIONS.** An employee using prescription drugs or over-the-counter medications that could affect the employee's performance must inform his supervisor. A doctor's statement that the employee poses no safety risk while on medication may be required.

## **SECTION 7. EMPLOYEE DISCIPLINE**

### **7.1 BASIS FOR EMPLOYEE DISCIPLINE**

**7.1 A. Just Cause Discipline.** Disciplinary actions for classified employees full and part-time are based on just cause in order to promote the efficiency of the services rendered by the City and the operation of its respective departments and offices. Disciplinary actions will be consistent with governing laws and regulations and will be taken without regard to race, age, religion, national origin, sex, sexual orientation, physical or mental disability or serious medical condition, or any non-merit factor. No employee will be disciplined for refusing to perform an unlawful act.

**7.1 B. Disciplinary Action Against Non-exempt Employees.** Any department head may take disciplinary action against a non-exempt employee pursuant to the department head's supervisory authority and consistent with departmental policies and this personnel ordinance. Copies of any documented disciplinary action must be furnished to the City administrator's office for placement in the employee's file with the signature of the recipient acknowledging receipt of the action.

**7.1 C. Consultation with the City Administrator and the City Attorney.** Discipline by a department head, other than reprimands, require consultation with the City administrator and the City attorney before implementation. Whenever such consultation is not practical because of urgent circumstances, the employee should be put on administrative leave with pay and the situation reviewed with the City administrator as soon as practical.

**7.2 PROGRESSIVE DISCIPLINE.** A classified employee will be progressively disciplined whenever appropriate. Each case of inadequate performance or act of misconduct will be judged individually. Actions involving unsatisfactory work performance require progressive discipline. The step of corrective action used depends on the severity of the infraction and the employee's previous work record. Under certain circumstances, as described below, suspension without pay or dismissal may be the appropriate initial disciplinary action.

**7.2 A. Verbal Reprimand.** A verbal reprimand is used for minor infractions such as informing the employee that his actions, behavior, or conduct needs to change. Supervisors will keep written notations of verbal reprimands. These will not be placed in the employee's personnel file. A verbal reprimand is non-grievable. Causes for verbal reprimands include, but are not limited to:

1. substandard work performance including failure to complete assignments or failure to complete them timely, inaccurate or unprofessional appearing work product, interrupting other employees



and keeping them from completing their work, excessive use of the telephone for personal business, loud and disruptive conduct, and conducting personal business while on-duty;

2. tardiness or absences.

#### **7.2 B. Written Reprimand.**

1. An employee will receive a written reprimand because the deficiency or infraction is of a greater degree than that for which a verbal reprimand may be used or if a verbal reprimand was not effective in correcting the employees conduct. Causes for written reprimands include, but are not limited to:

- (a) the causes listed above for verbal reprimands
- (b) repeated absences or tardiness
- (c) failure to follow instructions
- (d) failure to follow City rules and procedures
- (e) solicitation of citizens and other employees during work hours
- (f) writing personal letters on City letterhead and sending personal mail in City envelopes.

2. Written reprimands will be placed in the employee's personnel file by the employee's supervisor after providing the employee with a copy of the statement. The employee will be asked to acknowledge having read the comments by signing the statement. The employee's signature indicates the employee read the statement but does not necessarily indicate concurrence with it content. If the employee refuses to sign, a witness must attest that the statement was presented to the employee. The employee may respond with a written rebuttal, which will be placed in the employee's personnel file. The placement of a written reprimand in an employee's file is not subject to the formal grievance procedure.

**7.2 C. Suspension Without Pay.** An employee may be suspended without pay for a single serious offense or for continued inadequate job performance or misconduct after previous attempt(s) to correct the conduct have failed. Before any personnel action is taken the department head will discuss the matter with the City Administrator and/or Mayor. The Mayor and/or the City Administrator are exclusively vested with the power and authority to suspend without pay. Suspension is not a necessary step in progressive discipline, and it may be by passed if in the discretion of the City, circumstances so warrant. Suspension of a classified employee is subject to the formal grievance procedure. Causes for suspensions may include but are not limited to.

1. The causes listed or oral and written reprimands
2. Continued instances of unsatisfactory performance

**7.2 D. Demotion.** An employee may be demoted to a vacant position for which the employee is qualified when the employee does not possess the necessary ability to render satisfactory performance in the position presently held. Demoted employees will receive a reduction in pay. A classified employee demoted due to an inability to render satisfactory performance in the position presently held is entitled to grievance proceedings. Demotion is not a necessary step in progressive discipline.

**7.2 E. Dismissal.** Dismissal is the final consequence when progressive discipline has failed to change unacceptable behavior or performance or when the employee has engaged in behavior that is of a profoundly serious nature and which is unacceptable for a City employee even though the employee has not been previously disciplined. The department head must discuss the decision to dismiss an employee with the City administrator and the City attorney. Causes for dismissal without progressive discipline include, but are not limited to:

1. theft of City property;
2. conviction of a job-related felony and misdemeanor as described in the Criminal Offender Employment Act, NMSA 1978, §28-2-1;
3. acts of negligence causing damage to persons or City property;
4. falsification of information on the employee's job application or other City records;
5. manufacturing, distributing, dispensing, possessing or using controlled substances or alcohol on the job or reporting to work under the influence an unlawful controlled substance or alcohol;
6. failure to meet the standards of the City's drug policy or refusal to submit to drug or alcohol testing if requested by a law enforcement officer after being stopped or detained while driving a City vehicle.
7. intentional abuse or destruction of City equipment and/or property;
8. refusal to carry out reasonable orders;
9. discriminating against or harassment of employees or citizens based on race, color, religion, national origin, sex, age, mental or physical disability or serious medical condition;
10. bringing unapproved weapons on to City property;
11. refusal or failure to comply with City policy or state and federal regulations;
12. disruptive conduct interfering with the City's operation;
13. unauthorized use of City property, facilities, equipment, materials, or other City assets, including the use of the Internet and e-mail, for personal use;
14. accepting gratuities;
15. three days of absence-without-leave within any pay period;
16. any other conduct deemed not to be in the best interest of the City and its employees.

The above examples are typical of the types of infractions sometimes encountered but are not inclusive of all situations which may arise warranting dismissal without progressive discipline. The City reserves the right to exercise judgment and render disciplinary action or dismissal as determined appropriate based on the circumstances of each case. No employee will be disciplined for refusing to perform an unlawful act.

## **SECTION 8. GRIEVANCE PROCEDURES**

### **TYPES OF EMPLOYEE GRIEVANCES: FORMAL AND INFORMAL**

**8.1 FORMAL GRIEVANCE PROCEDURE.** The formal grievance procedure applies exclusively to the suspension, demotion other than as described in Section 5.2, above, or dismissal of classified employees.





**8.1.A. Written Notification.** The City administrator will present the classified employee with written notification of intent to suspend, demote, or dismiss at least three (3) working days in advance of the proposed action. The written notification must explain the reasons for the proposed action; the evidence supporting the decision; and the employee's right to a predisciplinary hearing. The notification will be hand delivered to the employee and initialed by the employee or sent to the employee via certified mail, return receipt requested:

**8.1.B. Immediate Suspension.** In cases where City property, City employees or citizens are at risk because of the employee's actions, or if the contemplated discipline is dismissal, the employee, after the approval of the City administrator, will be placed on administrative leave with pay while an investigation is conducted, the appropriate disciplinary action is determined, and until the predisciplinary hearing is held and the decision is rendered.

**8.1 C. Procedure for Pre-disciplinary Hearings for Suspension, Demotion, or Dismissal.** Employees will pursue a formal grievance according to the rules contained herein.

1. Request for Pre-disciplinary Hearing

a) Within three (3) working days of the receipt of the disciplinary notice, the employee will notify the City administrator, in writing, indicating whether or not the employee will avail himself of a pre-disciplinary hearing with the mayor.

b) Upon receipt of the employee's written statement indicating participation in a pre-disciplinary hearing, the City administrator will set the time, place, and date of the pre-disciplinary hearing. The employee and the employee's supervisor must be advised of the scheduled pre-disciplinary hearing in writing.

2. Pre-disciplinary Hearing Procedure. The mayor will meet with the employee, the employee's representative, and representatives of the employee's department at the appointed time. At this pre-disciplinary hearing, the employee will have the opportunity to respond to the proposed disciplinary action. The hearing will be held within five (5) working days of the receipt of the request for the pre-disciplinary hearing by the City unless a continuation is mutually agreed upon by both parties in writing.

3. Pre-disciplinary Hearing Decision. The mayor will issue a decision in writing within five (5) working days of the hearing. The written decision will include the time, date, and location of the meeting; persons present, the determination, and the reason for the determination. The written decision will be delivered directly to the employee (obtaining employee's signature of receipt of the decision) or be sent by certified mail, return receipt requested. The employee has the right to grieve the mayor's decision to the hearing officer.

4. Effect of the Decision. Disciplinary actions will become effective at the time that the final decision is issued by the mayor.

**8.2 INFORMAL GRIEVANCES.** The purpose of informal grievance procedures is to provide employees, in an atmosphere of courtesy and cooperation, an equitable solution to problems or complaints which may affect employees in the course of their employment with the City. When applicable, the informal grievance procedure allows employees to voice complaints concerning alleged improper actions of supervisors or management or other working conditions. The informal grievance procedure does not apply to suspensions, demotions, and terminations.

**8.2 A. Step One - Meeting with Department Head.**

1. The employee is required to contact his department head within five calendar (5) days of the incident or action being grieved to discuss the same.
2. Within three (3) working the completion of the meeting, the department head will provide the employee with a written decision

#### **8.2 B. -Step Two- Meeting with City Administrator.**

1. The employee may appeal the decision of the department head to the City administrator in writing within three (3) working days of the receipt of the department head's written decision.
2. The employee and one witness of his choice (if desired) and the department head will meet with the City administrator to discuss the grievance within five (5) working days of receipt of the written request by the City administrator. Within five (5) working days of the meeting, the City administrator will advise the employee of his decision in writing. The City administrator's decision will be final.

#### **8.3. CONDITIONS OR ACTIONS NOT GRIEVABLE.** The following are not grievable:

8.3 A. Employee complaints of discrimination or harassment based on race, color, religion, sex, age, national origin, physical or mental disability or serious medical condition. These should be reported directly to the City administrator or mayor who will investigate and resolve in compliance with Section 6.5 above.

8.3 B. Matters where the City is without authority to act or does not have the ability to provide a remedy.

8.3 C. Dismissal of probationary employees prior to the expiration of their probationary period.

8.3 D. Release of temporary or emergency-hire employees prior to or at the end of their anticipated employment period

8.3 E. Dismissal of appointed employees at any point during their employment with the City.

8.3 F. Transfers, temporary assignments, removal from temporary assignments, and promotions.

8.3 G. Performance appraisals, verbal or written reprimands, or selection for vacant positions.

**8.4 CONFIDENTIALITY.** All grievances shall remain confidential to the greatest extent practicable.

### **SECTION 9. COMPENSATION AND BENEFIT PROGRAM**

**9.1 HOURS OF WORK.** Full-time, non-exempt employees are expected to work at least thirty 30 hours per week. All employees will work their scheduled hours pursuant to work schedules established by their department heads with the approval of the mayor. Except as otherwise provided, employees will not be paid for travel time from home to the site of their work within the City of Santa Rosa or from the work site to their home. Actual work periods may fluctuate at the discretion of the department heads.

**9.2 BREAKS.** Full-time non-exempt employees take a one (1) hour unpaid lunch break. Law enforcement officers receive one-half (1/2) hour paid lunch break. Full-time non-exempt employees may take two (2) fifteen (15) minute breaks per day. Part-time non-exempt employees working four (4) hours per day may take one (1) fifteen (15) minute break per day. Only supervisors can determine whether breaks should be limited or delayed because of an emergency or unusual condition. Break time does not accrue for use at a later time or later date. Breaks should be taken in the immediate vicinity of the worksite unless otherwise approved by the supervisor. Breaks cannot be substituted for other time off.

**9.3 PAY PERIODS.** Employees are paid every two weeks at 11:00 a.m., on the Friday ending the pay period. The payroll period consists of two consecutive work weeks. All department heads must report to the clerk/treasurer's office all hours worked and all absences paid and unpaid, for each employee during the pay period on the Monday preceding payday. Paychecks are accompanied by a statement listing gross pay and itemized deductions. If payday falls on a holiday, employees will receive pay on the last working day before the holiday. Employees will not be paid for time not worked.

**9.4 WORK WEEK.** The City's work week begins on Sunday at 12:00 a.m. and ends on Saturday, at 11:59 p.m.

**9.5 PAYROLL DEDUCTIONS.** The City is required by federal and state law to make payroll deductions for income tax, social security deductions, PERA contributions, and other statutorily mandated purposes. To avoid problems with either federal or state agencies, report any changes in family status to the payroll department.

**9.5 A. PERA Benefits.** All non-temporary, non-seasonal City employees are required to contribute to the Public Employees Retirement Association of New Mexico (PERA) through a payroll deduction beginning on their date of hire. Copies of the latest PERA rules and provisions may be obtained in the office of the City Human Resources administrator.

**9.5 B. Insurance Benefits.** The City provides employees with the opportunity to purchase medical insurance, life insurance, dental insurance, and accidental death and dismemberment benefits to its full-time employees, the cost of which is shared by the City and the employee. The employee's share is made through payroll deductions. Insurance plans may be changed at the discretion of the State of New Mexico or the City council. Specific details about eligibility and enrollment can be obtained in the group insurance plan. Questions should be directed to the City Human Resources administrator.

**9.6 COMPENSATORY TIME OFF.** Compensatory time off is given to all employees for hours actually worked beyond forty (40) hours of actual work. Holidays, annual leave, sick leave, and all other paid leave time are not considered hours worked for purposes of accruing compensatory time off. A nonexempt employee will accrue compensatory time at the rate of one and one half (1 ½) hours of time off for each hour over 40 hours of actual time worked. An FLSA-exempt employee will accrue compensatory time at the rate of one hour of time off for each hour over 40 hours of actual time worked. Compensatory time hours accrued and used will be recorded for each nonexempt employee and submitted to the payroll department each pay period on approved forms.

**9.6 A.** Nonexempt police officers may accrue a maximum balance of one hundred eighty (180) hours of compensatory time for one hundred twenty (120) hours of overtime actually worked.

**9.6 B.** All other nonexempt employees may accrue a maximum balance of one hundred twenty (120) hours of compensatory time for eighty (80) hours of overtime worked.

**9.6 D.** Overtime pay at one and one-half (1 ½) the employee's usual rate of pay will be paid to an employee only when an employee accrues overtime in excess of the hours identified in Sections 9.6 A. and 9.6 B. above, and the City's needs preclude the employee from using compensatory time.

**9.6 E.** The department heads are responsible for authorizing and monitoring overtime and limiting its use. Excessive overtime will be considered in evaluating the performance of department heads.

**9.6 F.** Compensatory time may only be used with prior approval of the department head. Approval is subject to the City's work needs.

**9.6 G.** Upon termination, the employee will be paid for the unused balance of compensatory time owed.

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9.6 H. Employees may not work overtime without department head permission. Failure to obtain permission to work overtime will lead to disciplinary action.

9.6 I. Nonexempt employees are not permitted to work overtime and donate it to the City.

#### **9.7 OVERTIME PAY**

9.7 A. Overtime pay may only be accrued in lieu of compensatory time, and only with prior approval of the City Administrator.

9.7 B. Overtime pay is given to all non-exempt employees for hours actually worked beyond forty (40) hours of actual work. Holidays, annual leave, sick leave, and all other paid leave time are not considered hours worked for purposes of accruing overtime. A nonexempt employee will accrue overtime at the rate of one and one half (1 ½) hours of time off for each hour over 40 hours of actual time worked. An FLSA-exempt employee is not eligible for overtime pay.

9.6 C. Any overtime worked which exceeds the maximum authorized time will be paid to the employee on the next regular payday at one and one half (1 ½) times the employee's hourly rate. Any portion of an hour in excess of five (5) minutes will be computed and paid to the closest one-fourth (1/4) of an hour.

9.8 OFF-SHIFT RESPONSE PAY. Nonexempt employees who are called to work beyond their scheduled workday will be compensated for the actual call time. No compensation for actual call will be less than one hour's pay.

9.9. ON-CALL HOURS. All non-exempt employees in the water department who are on-call but are not called for work during a pay period will accrue such on-call hours for purposes of determining eligibility for compensatory time and overtime pay for that pay period.

9.10 VOLUNTEER SERVICE. Nonexempt employees who volunteer their time for City emergency services and are required to respond to emergencies during regularly scheduled working hours will be paid their usual rate of pay while responding to an emergency situation. Employees who volunteer after regularly scheduled working hours as emergency medical technicians will be paid according to the volunteer schedule.

9.11 FINAL PAYCHECK. An employee who resigns will receive a final paycheck on the first regularly scheduled payday following the employee's effective date of resignation. Any employee who is dismissed will receive a final paycheck by 5:00 p.m. on the fifth (5<sup>th</sup>) day following dismissal, and verification that all City property has been returned to the City. Day one begins the day of dismissal and includes Saturday and Sunday. In case of death, final salary and compensation for unused annual leave will be paid to the employee's named beneficiary, or if unnamed, to the employee's estate.

9.12 PERSONAL SAFETY EQUIPMENT. An employee in a designated job with the City may be required to wear special uniforms, equipment, or clothing to perform the job function. This equipment or clothing will be paid for by the City and must be returned to the City at the employee's separation from City employment.

9.13 GRATUITIES. All City employees are prohibited from accepting gifts or other considerations from vendors given with the intent of modifying the employees' performance of duties or encouraging the employees to make purchases from the vendor involved. Employees will maintain the highest moral standards and any attempt to influence an employee's performance by a vendor or other person will be reported to the department head.

9.14 PER DIEM AND MILEAGE. All payments of per diem and mileage allowance to City employees will be made pursuant to policies established by the State of New Mexico. In no event will any mileage be paid for travel by a City employee in connection with the employee's regular job duties within the boundaries of the City of Santa Rosa without the express written consent of the City Administrator.



**9.15 TIME SHEETS OR TIMECARDS.** The City must keep accurate records of each hour worked by nonexempt employees. The department head will forward the payroll time register for that department to the payroll office. The payroll department will keep a cumulative record of all leave time accrued and used. Weekly time sheets will be signed by the employee and by the employee's immediate supervisor. If a time sheet lacks a required signature, the paycheck will be prepared and may be held until the necessary signature is obtained or special authorization is provided by the department head. Time sheets must be submitted prior to issuance of the paychecks.

No employee is permitted to record time for another employee. Any employee intentionally reporting time not worked for himself or another employee will be dismissed.

**9.16 TIME CLOCK POLICY.** This Section shall be subject to the current City policy for time clocks, as approved by the City Council.

## **SECTION 10. LEAVE AND HOLIDAYS**

**10.1 AUTHORIZED LEAVE.** Leave is any authorized absence, with or without pay, during regularly scheduled work hours which is approved by the department head. The department head is responsible for the maintenance and transmittal of leave records to payroll office.

**10.1 A** Department heads shall approve all leave for any employees under their supervision.

**10.1 B.** The City Administrator shall approve all leave for any department head.

**10.2 UNAUTHORIZED LEAVE.** Absence without leave is subject to disciplinary action and loss of pay.

**10.3 HOLIDAYS.** The City observes the same legal holidays as the State of New Mexico if approved by the mayor and City council each January. Holidays include the following:

New Year's Day  
Martin Luther King Day  
Memorial Day  
Independence Day  
Labor Day

Indigenous People's Day  
Veterans' Day  
Thanksgiving Day  
The Day After Thanksgiving Day  
Christmas Eve Day Christmas Day

The following conditions will apply with respect to holidays and holiday pay:

**10.3 A.** When a legal holiday observed by the City falls on a workday, full-time employees will receive holiday pay for the hours normally worked on that particular day.

**10.3 B.** Temporary and part-time employees are not entitled to holiday pay..

**10.3 C.** When a holiday' falls during an employee's annual leave, the day will be counted as a holiday and not a vacation day.

**10.3 D.** In order to receive pay for a designated legal holiday, employees must be in a work or paid leave status on their scheduled workday immediately preceding and following the holiday or must have worked on the stated holiday. Employees absent without leave on their scheduled workday before or after a holiday will not receive pay for that holiday.

**10.3 E.** When a holiday falls on a Saturday, it will be observed on the preceding Friday. If the holiday falls on Sunday, it will be observed on the following Monday.

10.3 F. If an employee is required to work on a holiday (outside of their regular shifts), the employee will be paid one and one-half of their base pay for all hours worked.

10.3 G. No employee on leave will receive holiday pay. Employees shall not request leave on any holiday as defined above.

10.4 ANNUAL LEAVE WITH PAY. Classified and qualified unclassified full-time City employees accrue annual leave from their date of hire, and is credited on the employee's anniversary date each year, according to the following schedule:

10.4.A. A classified, full-time employee:

<u>Years of Service</u>	<u>Hours Accrued Per Pay Period</u>	<u>Hours Accrued Per Year</u>
Date of hire through the end of the tenth year of continuous employment		80 hours (2 weeks)
Beginning with the Eleventh year through the fifteenth year		100 hours (2 h weeks)
Over fifteen years of continuous service		120 hours (3 weeks)

10.4 B. Annual leave shall not be taken until the employee completes one year of employment

10.4 C. Annual leave shall not be granted in advance of accrual.

10.4 D. An employee shall not accrue annual leave for any time worked in excess forty (40) hours per week.

10.4 E. Upon termination from City employment, an employee will be paid for the employee's unused accrued annual leave. If the effective date of termination is before the end of the pay period, no leave will be credited for that pay period.

10.4 F. An employee may take annual leave just before the employee's separation from City employment.

10.4 G. Annual leave should be requested and approved at least ten (10) days in advance, unless a shorter time is approved by the City Administrator. Reasonable effort will be made to accommodate the employee's request, though approval will be subject to advance notification and the needs of the department. If annual leave is requested by one or more employees at the same time, seniority will rule.

10.4 H. A maximum of eighty (80) hours of annual leave may be accrued from an employees' date of hire to end of the tenth year of employment. A maximum of one hundred (100) hours of annual leave may be carried over from one calendar year beginning the eleventh year through the fifteenth year of employment. A maximum of one hundred twenty (120) hours of annual leave may be carried over from one calendar year to another for employees with fifteen years of continued employment service. It is the department head's

responsibility to schedule annual leave so that no more than the allowed hours are carried over into the next calendar year. This provision can be waived by the City administrator in writing, but the hours in excess of the allowed amount that are carried over to a new calendar year must be used by March 31st of the new year.

10.4 I. Temporary employees and part-time employees do not accrue annual leave.

#### 10.5 SICK LEAVE.

**10.5 A. Sick Leave with Pay.** Leave with pay is granted to a classified or qualified unclassified full-time employee for personal illness, pregnancy, or disability, or when an employee's child or spouse, or parent requires the personal attention of the employee because of a serious injury or illness.

1. Full-time employees accrue 4.0 hours of paid sick leave for each pay period.
2. Accrued sick leave may be accumulated year-to-year to a maximum of two hundred forty (240) hours, six (6) weeks.
3. There will be no pay for accrued sick leave upon resignation, lay-off, or involuntary dismissal.
4. Full-time employees begin to accrue sick leave with their first pay period.
5. Temporary employees and part-time employees do not accrue sick leave.
6. Any employee making a false claim for sick leave or who refuses to be examined by a physician may be dismissed.
7. Sick leave in excess of three (3) days must be supported by the certification of a licensed physician.
8. Planned use of sick leave must be reported to the department head as much in advance as possible.
9. In the case of an extended illness, an employee may apply accrued annual leave or compensatory time to sick leave.

**10.5 B. Physical Examination.** The City may request that an employee have a medical examination when it appears to the department head that the employee cannot perform the essential functions of his position, when a pattern of sick leave develops, or when an employee advises the department head that he cannot perform his job for medical reasons. The City will pay for the examination. An employee who refuses to be examined by a physician designed by the City will not receive sick leave pay for the claimed period of absence and may be dismissed. Employees who cannot perform the essential functions of their positions will be terminated if reasonable accommodation creates an undue hardship or if the employee poses a safety threat.

**10.5 C. Reporting Sick Leave.** Sick leave will be reported to the employee's supervisor by the employee or an immediate family member on a daily basis and as soon as possible but no later than one-half (1/2) hour after the beginning of the employee's work shift unless the nature of the illness requires extended leave certified by the employee's physician and of which the employee's supervisor is notified.

**10.5 D. Use of Sick Leave During Probationary Period.** Probationary employees accrue sick leave. Use of sick leave must be approved by the employee's supervisor on a day-by-day basis during the probationary period.

#### 10.6. FAMILY AND MEDICAL LEAVE OF ABSENCE (FMLA)

**10.6 A. Eligibility.** To be eligible for family and medical leave benefits, an employee must have worked for the City for a total of at least twelve (12) months and have worked at least 1,250 hours over the previous twelve (12) months. Eligible employees may receive up to a total of twelve (12) work weeks of unpaid leave during a 12-month period (measured backwards from the date the leave is first to commence). for one or more of the following reasons:

1. The birth of the employee's child;
2. The placement of a child for adoption or foster care;
3. To care for an immediate family member (spouse; child or parent) with a serious health condition; or
4. To take medical leave when the employee is unable to work because of a serious health condition.

All time taken off from work for any -of the above reasons will counted against the remaining balance of FLMA leave. Leave for the birth, adoption, or placement in foster care of a child must be completed within twelve (12) months of the applicable event.

**10.6 B. Required Use of Accrued Leave.** Family and medical care leave is unpaid. The City will require an employee to use all or a portion of the employee's accrued and unused vacation days to cover some or all of the leave prior to going on unpaid leave. No vacation or sick leave or personal days will accrue while an employee is on family and medical care leave.

**10.6 C. Requesting Family and Medical I-Rave and Medical Certification:** Employees requesting family care and medical leave may be required to provide: (a) thirty (30) day advance notice when the need for the leave is foreseeable; (b) medical certification (both prior to the leave and prior to reinstatement); (c) periodic recertification; and (d) periodic reports during the leave. The medical certification must state the date the condition started, how long it is expected to last, and, if the leave is to care for an immediate family member, how long the employee will be needed to provide care and that the serious health condition requires the employee to provide such care. If the leave is for the employee's own serious health condition, the certification must also state that the employee is unable to perform the essential functions of the employee's current position. When leave is needed to care for an immediate family member or the employee's own serious health condition and is for planned medical treatment, the employee must try to schedule treatment so as not to unduly disrupt department operations.

If the employer has any doubt as to the validity of the certification, a second opinion may be required from a medical provider of the City's choice and at its expense. In addition, the City may require that a third opinion be obtained from a health care provider at the employer's expense. In such an event, the opinion of the third provider will be final and binding.

**10.6 D. Reinstatement.** An employee returning from an approved family or medical care leave of absence that does not exceed the maximum eligible length of leave will be reinstated to his or her original position or an equivalent one with no loss of seniority or benefits that accrued prior to taking the leave. A medical-release to return to work from a leave-taken because of the employee's own serious health condition may be required from the employee's health care provider. An employee who does not return to work at the end of an authorized leave and does not obtain an approved extension of leave will be regarded as having voluntarily resigned.

If an employee on leave is a salaried employee who is among the top ten percent (10%) of employees in terms of gross earnings and keeping the job open for the employee during the leave would result in substantial grievous economic injury to the operations of the City, reinstatement may be denied. In such cases, the City must give the employee a reasonable opportunity to return to work after notifying the employee of the intent to refuse reinstatement.

10.6 E. **Continuation of Benefits.** During an approved leave, the City will continue to provide, if otherwise available, medical coverage under its group health plan on the same conditions that would have applied if the employee had not taken the leave. In no case will the City continue to pay for such coverage for more than twelve (12) weeks in any twelve (12) month period. The employee will remain responsible for paying the employee's portion, if any, of the insurance premium, including the premium for dependent coverage, if available. Failure to pay premiums on a timely basis may result in a lapse of coverage. If the employee fails to return to work when leave expires, the employee will be required to reimburse the City for the group health insurance premium paid by the City on behalf of the employee during the leave unless the employee fails to return because of a continuation, reoccurrence, or onset of a serious health condition that entitles the employee to leave under this policy or due to circumstances beyond the employee's control.

No sick or annual leave will accrue while an employee is on unpaid leave.

10.6 F **Intermittent Leave.** Intermittent leave or reduced work schedule will only be permitted if the employee suffers from a serious condition or if an employee's spouse, child, or parent suffers from a serious condition. Intermittent leave must be scheduled with the employee's supervisor in advance of the need to take intermittent leave.

10.6 G **Federal Law and Savings Clause.** This section is subject to applicable Federal law. In the event of any conflict between this section and federal law, the remainder of this section shall be valid and enforceable to the extent possible.

**10.7. UNPAID NON-FAMILY AND MEDICAL LEAVE FOR OCCUPATIONAL AND NON-OCCUPATIONAL DISABILITIES.** Any employee who is not eligible for family and medical leave of absence may request, in writing, an unpaid medical leave if he or she is unable to work due to an occupational or non-occupational medical condition. Upon approval of a request by the City, an employee will be granted a leave of absence for the period of his disability, under the following terms provided such period does not exceed three months.

10.7 A Any employee who is granted a medical leave of absence not covered by FMLA will utilize any accrued vacation leave, and/or other benefits available to the employee during the period of his disability. Health and other insurance benefits ordinarily provided by the City, and for which the employee is otherwise eligible, will be continued during the period of disability at the employee's expense. Vacation, sick and holiday benefits will not accrue during any medical leave under this section.

10.7 B Request for extensions of a leave of absence will be considered if it is received by the City in writing before the expiration of the approved leave; is supported by proof of continued disability in the form of a physician's statement; and if requested extensions do not cause the total period of absence to exceed the maximum time permitted by this policy of three months. An employee who fails to report for work at the end of an approved leave will be deemed to have voluntarily resigned.

10.7 C An employee who returns to work at the end of his or her medical leave of absence not covered by FMLA will be returned to his or her former position, if possible, or will be offered the first available opening in a comparable position for which he or she is qualified. Such an employee will be credited with all service prior to the commencement of his or her disability, but not for the period of his or her disability.

**10.8 FUNERAL/BEREAVEMENT LEAVE.** In the event of the death of an employee's immediate family member, the employee may be granted three (3) days paid leave to attend the funeral and attend to the personal affairs and matters related to the death. For the purpose of this section only, immediate family member includes employee's spouse, domestic partner, parent, mother-in-law, father-in-law, child, stepchild, grandparent, grandchild, or sibling, brother-in-law, sister-in-law.

In the event the employee needs to travel a distance greater than 300 miles, or for other mitigating circumstances, to attend a funeral, memorial service or other such event honoring or acknowledging the deceased the City Administrator may in his/her discretion grant additional time, either paid or unpaid on a case-by-case basis. Such additional time will not exceed two (2) additional working days for a total of five (5) days. All time over twenty-four (24) hours will be charged to annual leave or compensatory leave.

Funeral/Bereavement leave shall not be charged to accumulated annual leave or sick leave said leave does not count towards hours worked for the purpose of computing overtime or compensatory time.

In the event an employee is qualified for Funeral/Bereavement leave and is unable to attend the funeral, memorial service or other such event honoring or acknowledging the deceased and attend to the personal affairs and matters related to the death of the employee's relation as set forth above, the City Administrator may, in his/her discretion grant no more than five (5) workdays of annual leave, if due to bereavement and the employee is unable to continue to work.

If requested by the City Administrator, an employee must present reasonable proof of death, relationship, and or attendance to the funeral, memorial service or other such event honoring or acknowledging the deceased, and attendance to the personal affairs and matters related to the death of the employee's relation as set forth above.

**10.9 ADMINISTRATIVE LEAVE WITH PAY.** Leave with pay and travel pay may be authorized by the department head to allow employees to attend training, workshops, and meetings of boards and commissions when the employee's attendance is on the behalf of the City and in the best interest of the City. Employees will also receive payment for per diem, mileage, and all necessary and preapproved out-of-pocket expenses with the submittal of receipts upon return of trip. If the employee is paid by the board or commission for his attendance, the City will pay the employee his regular salary less the amount received by the employee from the board or commission. Administrative leave with pay may also be granted by a department head with the approval of the City administrator pending disciplinary action.

#### **10.10 OCCUPATIONAL INJURY TIME/WORKERS' COMPENSATION.**

**10.10 A. Workers' Compensation.** Employees injured on the job or suffering from occupational diseases, as defined in the New Mexico Workers' Compensation law, will receive workers' compensation benefits as prescribed by law. An employee may elect to continue group health coverage, with the employee and the employer paying their respective share of the premium, during an unpaid leave of absence for which workers' compensation is being paid for up to a period of twelve (12) weeks, provided however, all other eligibility requirements must continue to be met for the period of continuation of coverage.

**10.10 B. Reporting Procedure.** All work-related injuries requiring attention must be reported to the employee's department head as soon as possible but no later than the end of the employee's workday or shift. A First Report of Injury form must be filed by either the injured employee or, if the employee is unable to do so, by their immediate supervisor with the City administrator within three (3) days of the injury. Failure to report injuries within three (3) days, will be grounds for denial of the injury claim. The report must be signed by the employee and the employee's department head. In addition, the department head's accident investigation report must be filed on the day following the day the department head receives the employee's first accident report. All injuries should be reported, however minor.

**10.10 C. Medical Procedure.** An employee, who incurs a job-related related injury/illness, should see the health care provider of his or her choice. The City may require the injured employee to seek consultation or treatment with another health care provider at a later time in accordance with the Worker's Compensation Act.

**10.10 D. Return to Work.** An employee must return to his or her former position or be reassigned to a comparable position if the employee's physician certifies that the employee can return to work within three

(3) months of the injury. If an employee is unable to perform the essential functions of his job with reasonable accommodations at the end of three months, the employee will be dismissed.

#### **10.10 E. Modified Work Schedule.**

1. An employee returning from workers' compensation disability may return to light duty if an appropriate position is available and the employee's physician certifies that the employee can return to a modified work schedule.
2. Light duty is defined either as performing the same job as the employee held before the injury or as performing the duties of another position for which the employee is qualified, for fewer than eight (8) hours each day or having reduced physical requirements for the full day or less than the full day.
3. The times and conditions of light duty will be determined by the employee's department head in conjunction with the City administrator. All light duty assignments are temporary and will not exceed three (3) months.

**10.10 F. Reemployment of City Employees Injured on the Job.** A classified full-time or part-time employee, who has received benefits pursuant to the Worker's Compensation Act and who was unable to return to work during the twelve (12) week period during which the City held the employee's position open, may apply for his preinjury job, a modified job similar to the preinjury job, or any job that pays less than the preinjury job, provided that the employee is qualified for this job and the City is hiring. The City will rehire the classified full-time or part-time employee provided that the employee's treating health care provider certifies that the employee is fit to carry out the job without significant risk of injury.

**10.11. CIVIL DUTY LEAVE.** An employee will be given necessary time off with pay for the following:

**10.11 A. Jury Duty.** Pay for jury duty will be authorized only for those days that the employee is scheduled to work. If excused by the court during a working day, the employee will return to duty if at least one (1) hour of City duty can be served in that workday. If the employee does not return to work, the balance of the day will be charged to annual leave or leave without pay.

1. The employee must provide his or her supervisor with a copy of the summons for jury duty.
2. Employees are expected to report to work for the hours before and after jury duty.
3. Part-time and temporary employees do not receive pay for jury duty.

The employees seeking pay for jury time, must turn over to the City all compensation received from the court for serving as a juror.

**10.11 B. Court Appearance Time.** Full-time and part-time employees will be paid for court time when required by City duties or subpoenaed to appear before a court, personnel hearing officer, public body or City council for the purpose of testifying in regard to City matters. If court appearance is not required by City duties, the employee will not receive pay unless the employee uses accrued vacation or compensatory time.

**10.11 C. Voting.** For purposes of a national, state, or local election, an employee who is registered to vote will be paid time for voting. All municipal, state, county, and federal election polls are in the Santa Rosa City Hall or the surrounding area. The employee's supervisor may specify the time in which an employee can vote during the workday. For employees residing outside Guadalupe County, an employee's supervisor shall allow necessary travel time as part of this paragraph.

## **10.12 MILITARY LEAVE FOR RESERVE OR NATIONAL GUARD DUTIES.**

**10.12 A Paid Military Leave for Reserve or National Guard Activities.** Paid military leave is granted for authorized reserve or National Guard activities for a maximum of fifteen (15) working days during a one-year period. Military leave must be requested twenty (20) days in advance. The employee must furnish proof of duty orders or other documentation prior to leave being granted unless the leave is for emergency purposes.

**10.12 B Unpaid Military Leave.** Employees voluntarily or involuntarily serving on active duty for more than fifteen (15) working days will be placed on leave without pay. The employee taking military leave will not first be required to exhaust annual and sick leave.

**10.12 C. Employees Returning from Unpaid Military Leave.** Any employee who leaves a position he has held with the City, other than a temporary position, to enter the armed forces of the United States, national guard or organized reserve, and who serves on active duty and is honorably discharged or released from active duty to complete his remaining service in a reserve component, and who is still qualified to perform the duties of the City position previously held, will be reemployed in such position or to a position of like seniority, status, and pay. To be reemployed in such position, the employee must make application for reemployment within ninety (90) days after he is released from training or duty or within ninety (90) days of release from hospitalization which continued after honorable discharge for a period of not more than one (1) year.

1. The returning employee will be deemed to have accrued seniority and length of service rights as though his employment with the City had been continuous since the date of initial employment.
2. The returning employee will have all annual and sick leave accrued at the time of his departure for military services restored.

**10.13 INCLEMENT WEATHER.** The City administrator may at his or her discretion close certain City offices and send some or all employees home due to inclement weather. Employees will be paid for time off due to inclement weather. If more than one additional day is needed due to inclement weather and the employee wishes to be paid, the employee must use accrued compensatory time or annual leave. In the event of closure due to inclement weather, all City employees shall work from home to the extent practicable.

## **SECTION 11. POWERS AND DUTIES OF CITY ADMINISTATOR**

**11.1.** The City Administrator shall be the Chief Administrative Officer of the City, exclusive of hiring and firing. He shall supervise and be responsible for the effective management of the administrative affairs of the municipality. He shall give general, and if he deems necessary, specific direction to the employees, programs, and activities of all municipal departments.

**11.2.** The City Administrator shall make recommendations with respect to purchases on behalf of the City departments for materials, supplies and equipment.

**11.3.** The City Administrator shall enforce and carry out all ordinances, rules and regulations enacted by the governing body.

**11.4.** The City Administrator shall keep the Mayor and Council informed of the conditions and needs of the City and make such reports and recommendations as he or she may deem desirable or as may be requested by the Mayor or the governing body.

**11.5.** The City Administrator shall attend all meetings of the governing body, and shall assist in the preparation of budgets, financial reports, and perform such other duties as shall be required for this position.



11.6. The City Administrator shall have all powers as described at Section 3-14-14 of the New Mexico Municipal Code.

## SECTION 12. MISCELLANEOUS

**12.1. CHAIN OF COMMAND.** All employees are required to follow the chain of command as outlined in the City's organizational chart maintained by the City Administrator.

**12.2. DESIGNATED WORK AREAS.** All employees must be at their designated work areas on time and ready to work. They will work until the scheduled quitting time unless permission of the supervisor has been obtained for different work hours. Employees will not litter work areas and will keep them neat and clean.

**12.3. PERSONAL MATTERS.** Personal matters must not negatively interfere with an employee's job performance or discharge of their job duties. No private commercial or business activity may be conducted by any employee in any manner whatsoever during work hours or while on City premises.

**12.4. SAFETY.** The City is committed to having all work conducted in a safe manner. All safety precautions must be followed. The City's safety committee is responsible for establishing a general safety program.

**12.5. CITY PROPERTY.** Employees must not misuse City property, records, or other material in their care, control, custody, or remove any City property, records, or other material from the premises of the City offices unless permission has been given by the department head. Employees must not use City property, records or equipment for personal use.

**12.6. CITY VEHICLES.** Employee use and maintenance of City vehicles is governed by the most recent vehicle usage policy approved by the council. All employees are expected to understand and adhere to such policy.

**12.7. DRESS AND APPEARANCE.** Employees are constantly in the public eye, consequently it is important that the employees present the best possible image to the public. Employees should always be clean and neatly dressed in clothing suitable for their work assignments. Employees will not wear athletic clothing, t-shirts with logos or printing, or tank tops.

**12.8. PERSONNEL FILES.** Subsequent to hiring, a separate file will be prepared and maintained for each employee. These records will be kept in the City clerk's office. It is the responsibility of each department head and the employee to ensure that the records of the employees are completed and up to date.

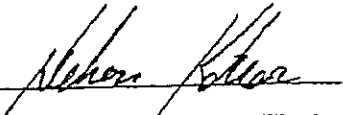
**12.9. INSPECTION OF PERSONNEL FILES.** Personnel files are subject to the New Mexico Public Records Act, NMSA 1978, §14-2-1 et seq. and all exceptions provided therein. Any employee wanting to review his or her entire personnel file may do so by making arrangements with the Human Resources Director.

**12.10. ADDITIONAL RULES.** Employees will obey all additional rules, directives and requests stated verbally or in writing by their supervisors, their department heads, or the City administrator. Employees are required to follow all standards, rules, procedures, and policies that are similar or normally expected in the workplace.

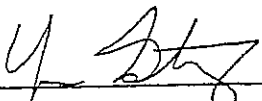
**12.11. SAVINGS CLAUSE:** If any section, subsection, or sentence, or clause or phrase of this ordinance is for any reason held invalid, such shall not affect the validity of the remaining portions of this ordinance.

All prior ordinances or resolutions, or parts of ordinances or resolutions in conflict herewith are hereby repealed.

PASSED, APPROVED, AND ADOPTED THIS 12<sup>th</sup> DAY OF JANUARY 2021.

  
\_\_\_\_\_  
Mayor, Nelson Kotiar

Attest:

  
\_\_\_\_\_  
Yvonne Gutierrez, City Clerk