



**VILLAGE OF MAGDALENA**  
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**AGENDA**  
**NOTICE OF REGULAR MEETING OF THE VILLAGE OF MAGDALENA BOARD OF TRUSTEES**  
**MONDAY, SEPTEMBER 24, 2018**  
**VILLAGE HALL 108 N. MAIN STREET 6:00 PM**

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. PLEDGE OF ALLEGIANCE**
- 4. APPROVAL OF AGENDA**
- 5. APPROVAL OF MINUTES**
  - a. REGULAR MEETING – SEPTEMBER 10, 2018**
- 6. APPROVAL OF CASH BALANCE REPORT**
- 7. APPROVAL OF BILLS**
- 8. MAYOR'S REPORT**
- 9. CLERK'S REPORT**
- 10. FINAL READING –DISCUSSION & POSSIBLE DECISION TO APPROVE ORDINANCE NO. 2018-04, AN ORDINANCE RELATING TO ADMINISTRATION, ADOPTING A PERSONNEL POLICY; SETTING FORTH PERSONNEL RULES AND REGULATIONS ESTABLISHING CONSISTENT, BASIC POLICIES AND PRACTICES CONCERNING RELATIONS BETWEEN THE VILLAGE AND ITS EMPLOYEES**
- 11. DISCUSSION & POSSIBLE DECISION REGARDING APPROVAL OF MEMORANDUM OF UNDERSTANDING BETWEEN CHILDREN, YOUTH AND FAMILIES DEPARTMENT AND MAGDALENA MARSHAL'S OFFICE**
- 12. PUBLIC INPUT – 1 TOPIC PER PERSON – 3 MINUTE LIMIT**
- 13. EXECUTIVE SESSION – NMSA 10-15-1(H)(7) – POTENTIAL LITIGATION**
  - a. UNPAID LODGER'S TAX**
- 14. DISCUSSION & POSSIBLE DECISION REGARDING APPROVAL FOR CLERK TO AUDIT LOCAL MOTEL(S) FOR LODGER'S TAX**
- 15. ADJOURNMENT**

*NOTE: THIS AGENDA IS SUBJECT TO REVISION UP TO 72 HOURS PRIOR TO THE SCHEDULED MEETING DATE AND TIME (NMSA 10-15-1 F). A COPY OF THE AGENDA MAY BE PICKED UP AT THE VILLAGE OFFICE, 108 N. MAIN STREET, MAGDALENA, NM 8725. IF YOU ARE AN INDIVIDUAL WITH A DISABILITY WHO IS IN NEED OF A READER, AMPLIFIER, QUALIFIED SIGN LANGUAGE INTERPRETER OR ANY OTHER FORM OF AUXILIARY AID OR SERVICE TO ATTEND OR PARTICIPATE IN THE MEETING, PLEASE CONTACT THE VILLAGE CLERK AT 575-854-2261 AT LEAST ONE WEEK PRIOR TO THE MEETING OR AS SOON AS POSSIBLE.*

**Minutes of the Regular Meeting of the Village of Magdalena  
Board of Trustees  
Held Monday, September 10, 2018 at 6:00 p.m.**

**DRAFT**

Mayor Richard Rumpf called the meeting to order at 6:00 p.m.

**Present:** Mayor Richard Rumpf, James Nelson, Donna Dawson, Clark Brown, Stephanie Finch - Clerk/Treasurer, Attorney Kathy Riley

**Absent:** Lynda Middleton

**Guests:** Kim Obele, Michael Zamora, John Larson, Kayla Scartaccini, Dr. Glenn Haven, Carleen Gomez - Deputy Clerk

Mayor Richard Rumpf requested that Municipal Judge Kayla Scartaccini lead the gallery in reciting the Pledge of Allegiance.

**Approval of Agenda:** Mr. Nelson motioned to approve the agenda as presented, seconded by Ms. Dawson. The motion carried unanimously.

**Approval of Minutes:** Ms. Dawson motioned to approve the minutes of the Regular Meeting held on August 27, 2018, as presented, seconded by Mr. Brown. The motion carried unanimously.

**Approval of Cash Balance Report:** Ms. Dawson motioned to approve the cash balance report, as presented, seconded by Mr. Brown. The motion carried unanimously.

**Approval of Bills:** Ms. Dawson motioned to approve the bills, as presented, seconded by Mr. Nelson. The motion carried unanimously.

DMCO	\$151.82	Eagle Wholesale	\$117.50
Econo Signs	241.00	EMS Billing Services	81.56
Gall's	79.98	GSD-State Printing	956.70
HollyFrontier	10,441.24	King Industries	1,641.88
L.N. Curtis & Sons	4,985.00	Merchants Auto	384.09
Nance, Pato & Stout	638.25	Napa Auto Parts	21.88
NM Fire	1,500.00	NM Rural Water Assoc.	1,500.00
Pitney Bowes	214.86	Quill	517.64
Rice & Associates	4,200.00	Socorro County Manager	540.00
Socorro True Value	3.59	TP Pump & Pipe Co.	332.00
Verizon Wireless	798.10	Village Of Magdalena	60.00

W.S. Darley	\$1,059.00	Wex Bank	\$2,986.11
WNM Communications	1,104.99		

### **Mayor's Report**

Mayor Rumpf reported that everything was going smoothly for the Village. He stated that the five streets that were scheduled to be chip and fog sealed were almost done. He stated that the Village crew worked hard on the street project.

### **Clerk's Report**

Clerk Finch reported that the Auditor's came and began working on Fiscal Year 2018 and they will continue to work on it throughout the month of September. Clerk Finch stated that she has moved the Village's bank accounts to First State Bank. She stated that there is still some money in Wells Fargo to cover any outstanding checks. Clerk Finch stated that First State Bank will be remodeling the building and they hope to open in January and maybe even sooner. She said they plan on being open three days a week to begin with.

#### **a. Discussion & Possible Decision Regarding Approval Of Budget Adjustment Resolution No. 2019-01**

Clerk Finch stated that the budget adjustment would cover the transfer of \$10,000.00 out of the General Fund into the Sewer Fund to help cover the cost of the Preliminary Engineering Report for Sewer.

Ms. Dawson motioned to approve Budget Adjustment Resolution No. 2019-01, seconded by Mr. Nelson.

Mayor Rumpf suggested that Clerk Finch request a roll call vote:

Mr. Brown            AYE

Ms. Dawson        AYE

Mr. Nelson         AYE

The motion carried unanimously.

### **Department Reports**

#### **EMS**

Assistant Fire Chief and EMT Jim Nelson reported that there were two EMS calls in the month of August. He reported that he attended trainings to maintain his EMT certification and get continuing education credits.

#### **FIRE**

Assistant Fire Chief and EMT Jim Nelson reported that there were three fire calls in the month of August. Fire Captain Richard Rumpf stated that on October 6<sup>th</sup> from 10-2pm there will be an

open house with Fire Wise, Ready-Set-Go, the State Forestry and Bureau of Land Management would be present. He stated that it would be a community outreach with a lot of helpful information and snacks. She stated that it is an event that is open to the public and encouraged everyone to attend.

#### **MARSHAL**

Marshal Michael Zamora stated that everything was going well. He stated that two applications had been received for Deputy. He added that he would like to wait and see if more applications would come in with a possible certified candidate.

#### **JUDGE**

Municipal Judge Kayla Scartaccini stated that there were four cases brought to Court in the month of August. She stated that two cases were dismissed and the other two were found guilty. She stated that a total of \$216.00 was due to the court for those cases.

#### **PUBLIC WORKS**

A report was submitted by Interim Joint Utility Manager Jacob Finch and reviewed by the Board. Mayor Rumpf stated that Mr. Finch and the Clerk had met with Mr. Aaron Beckworth concerning the Village's Sanitary Survey and everything went well. Clerk Finch stated that there were only two small issues of which were fixed the following day. She stated that Mr. Beckworth was very please with how clean everything is.

#### **LIBRARY**

A report was submitted by Librarian Yvonne Magener and reviewed by the Board.

#### **Final Reading - Discussion & Possible Decision Regarding Approval Of Ordinance No. 2018-03, An Ordinance Relating To The New Mexico Uniform Traffic Ordinance Adopted By The Village Of Magdalena; Establishing Penalty Assessment Program; Defining Penalty Assessment Misdemeanors; Establishing Listed Schedule Of Penalty Assessments; And Repealing All Ordinances Or Parts Of Ordinances In Conflict Thereof**

Clerk Finch pointed out that the new, slightly raised, penalty assessments are on the Uniform Traffic Ordinance that was presented in the packets. She stated that Section E. states that the \$20 Corrections Fee, the \$6 Court Automation Fee and the \$3 Judicial Education Fee will have to be added to said Penalty Assessment amounts.

Ms. Dawson motioned to adopt Uniform Traffic Ordinance No. 2018-

03, seconded by Mr. Nelson.

Mayor Rumpf suggested that Clerk Finch request a roll call vote:

Ms. Dawson AYE

Mr. Brown AYE

Mr. Nelson AYE

The motion carried unanimously.

**First Reading - Discussion & Possible Decision Regarding  
Approval To Publish Ordinance No. 2018-05, An Ordinance Adopting  
The New Mexico Uniform Traffic Ordinance By Reference**

Ms. Dawson motioned to publish said Ordinance, seconded by Mr. Brown.

Mayor Rumpf suggested that Clerk Finch request a roll call vote:

Mr. Nelson AYE

Mr. Brown AYE

Ms. Dawson AYE

The motion carried unanimously.

**Public Input - 1 Topic Per Person - 3 Minute Limit**

Mrs. Kim Obele with the Magdalena Ranger District stated that the Village of Magdalena currently has a Mutual Aid Agreement with the Cibola National Forest. She stated that the Village should have received a letter asking for their comment on the Forest Plan. She explained that the Forest Plan is a 30-year plan and the Forest Service is only accepting formal comment from those who have an MOU. She stated that the deadline to give input would be October 5<sup>th</sup>, 2018. Mrs. Obele explained that there would be an Open House on September 26, 2018 from 4-7pm at the Fine Arts Center for the public to go over the plan and ask any questions. She added that the large tree at the Magdalena Office was taken down and people are taking advantage of the chips and the stumps are going to be used as well.

Dr. Glenn Haven, Superintendent of the Magdalena Municipal Schools was present to announce that school has started, and he is very excited about it. He stated that all the vacant positions are now filled, with one new teacher coming from North Carolina. He encouraged everyone to visit the school. He stated that Football and Volleyball have started and there is a lot of school spirit. He added that the quality of his teachers is very good. He stated that the Elementary grade is an F, the Middle School went from a D to a C and the High School is at a C. He stated that walk throughs have been done to make sure teaching is going on in the classrooms. Dr. Haven also stated that the School is working with the Marshal and EMS & Fire on a

Safety Plan. He added that he is always up to working on professional development and is working on his second year at Magdalena Schools. He added that the teacher evaluations just came out and everyone is making progress. He stated that he has a great staff and they will continue to make gains.

**Executive Session - 10-15-1(H)(2) - Limited Personnel Matter**

Ms. Dawson motioned to go into Executive Session at 6:40 p.m. to discuss a limited personnel matter, seconded by Mr. Nelson.

Clerk Finch requested a roll call vote:

Mr. Nelson        AYE

Ms. Dawson       AYE

Mr. Brown        AYE

The motion carried unanimously.

**a. Joint Utility Manager**

Ms. Dawson motioned to go back into regular session at 6:44 p.m. and certified that only limited personnel matters were discussed, and no decisions were made, seconded by Mr. Nelson.

Clerk Finch requested a roll call vote:

Mr. Brown        AYE

Ms. Dawson       AYE

Mr. Nelson        AYE

The motion carried unanimously.

**Discussion & Possible Decision Regarding Approval To Hire Joint Utility Manager**

Mayor Rumpf brought forth the name of Mr. Jacob Finch for hire as Joint Utility Manager. Mayor Rumpf explained that Mr. Finch was the only applicant and he had a priority since he is a current employee.

Ms. Dawson motioned to approve the hire of Mr. Jacob Finch as the Joint Utility Manager, seconded by Mr. Brown.

Mayor Rumpf suggested that Clerk Finch request a roll call vote:

Mr. Nelson        AYE

Mr. Brown        AYE

Ms. Dawson       AYE

The motion carried unanimously.

Ms. Dawson motioned to adjourn the meeting at 6:45 p.m., seconded by Mr. Nelson. The motion carried unanimously.

Respectfully Submitted,

Stephanie Finch, CMC, CPO  
Clerk/Treasurer

Richard Rumpf  
Mayor

Minutes Taken By:

Carleen Gomez, CMC  
Deputy Clerk

**VILLAGE OF MAGDALENA  
PERSONNEL ORDINANCE № 2018-04**

**An Ordinance Relating to Administration, Adopting a Personnel Policy; Setting forth Personnel Rules and Regulations Establishing Consistent, Basic Policies and Practices Concerning Relations between the Village and its Employees**

**PREAMBLE**

**WHEREAS**, NMSA 1978, Section 3-18-1 provides that municipalities have the power to “protect generally the property of its municipality and its inhabitants” and to “preserve peace and order”; and,

**WHEREAS**, NMSA 1978, Section 3-17-1 *et seq.* provides that municipalities may adopt ordinances, not inconsistent with State law, to discharge those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the county and its inhabitants; and,

**WHEREAS**, NMSA 1978, Section 3-13-4 (1965) allows municipalities to establish a personnel merit system for the hiring, promotion, discharge and general regulation of municipal employees; and,

**WHEREAS**, NMSA 1978, Section 3-11-6 sets out the duties and prerogatives of the Mayor and Governing Body subject to the limitations of a merit system ordinance.



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## SECTION I: DEFINITIONS

- 1.1 **ADMINISTRATIVE LEAVE WITH PAY.** Leave with pay granted at the Mayor's discretion after considering the elected official's or department director's recommendation. Bereavement Leave will be considered Administrative Leave with pay. See Section 10.12
- 1.2 **ADMINISTRATIVE LEAVE WITHOUT PAY.** Leave without pay granted at the Mayor's discretion after considering the department director's recommendation.
- 1.3 **ANNIVERSARY DATE.** Anniversary date means the date of appointment or reemployment and is changed as of the date of promotion, demotion, reduction, or change to a different technical occupation group, group role, or manager category in the same pay band or pay opportunity.
- 1.4 **ANNUAL LEAVE.** Leave with pay granted to an employee, after accrual at a specific rate, with approval of the employee's supervisor.
- 1.5 **CASUAL EMPLOYEE.** An employee hired to fill a position paid by the hour that may be called on short notice and/or on an occasional basis. Casual employee may also be one who works less than twenty (20) hours a week. A casual employee is paid only for hours worked and does not receive any employment benefits. A casual employee does not have the right to challenge employment decisions.
- 1.6 **CLERK.** Village Clerk/Treasurer.
- 1.7 **CONTINUOUS LENGTH OF SERVICE.** Continuous length of service means the length of time for which there have been no breaks in employment as an employee spanning from the employee's Date of Hire, other than annual leave, sick leave, military leave, or authorized leave without pay for less than six (6) months.
- 1.8 **CONTRACT EMPLOYEE.** Contract employees are FLSA exempt and are unclassified employees and have a contract approved by the governing body. Contract employees serve at the will and pleasure of the governing body. Contract employees are not entitled to grievance procedures or holiday premium pay.
- 1.9 **DEMOTION.** An employee may be demoted to a position for which the employee is qualified when the employee would otherwise be terminated. The demotion may be a result of funding shortages. An employee who does not possess the necessary ability to render satisfactory performance in the position presently held may be demoted. Employees may voluntarily request such a demotion. Demoted employees may receive a reduction in pay, per the Mayor's approval. Only a regular employee demoted due to disciplinary action is entitled to grievance procedures under Section VIII, Grievance Procedures.
- 1.10 **DEPARTMENT DIRECTOR.** An employee appointed by the governing body to fill a position who has the responsibility of supervising and administering a department of Village government as determined and designated by the governing body.
- 1.11 **DISMISSAL.** Dismissal means the involuntary separation or dismissal from employment for disciplinary reasons.
- 1.12 **DOMESTIC PARTNER.** An individual who has an exclusive and committed relationship with a Village employee and the relationship is the same as, or similar to, a marriage relationship in this state. For purposes of these Rules: 1) domestic partners must have shared a common, primary residence for twelve (12) or more consecutive months, 2) must jointly be responsible for each other's common welfare and share financial obligations, 3) neither can be married or a member of another domestic partnership, 4) both must be at least 18 years of age, and 5) are not related by blood to a degree of closeness that would prevent them from being married to each other in this state.

- 1.13 **DUE PROCESS.** The right granted to a regular employee to pre- and post-disciplinary hearings for actions of suspension, demotion or dismissal.
- 1.14 **EXEMPT EMPLOYEES.** All executive, administrative and professional employees as those terms are defined in the federal Department of Labor regulations relating to the Fair Labor Standards Act, and whose compensation is based on a fixed salary.
- 1.15 **GOVERNING BODY.** Board made up of Trustees and the Mayor.
- 1.16 **GRANT FUNDED EMPLOYEE.** A full or part-time employee hired to fill a position that exists only upon receipt of grant funds. This position is terminable-at-will if funding is not received or upon expiration of the grant agreement.
- 1.17 **GRIEVANCE HEARING.** A formal hearing conducted at the request of an employee who is challenging a promotion, suspension, demotion, involuntary transfer, or dismissal as set forth in these Personnel Rules and Regulations.
- 1.18 **GRIEVANCE.** A formal complaint by an employee concerning actions taken by management which result in loss of pay to the employee and/or privileges to the employee including suspension, demotion, involuntary transfer or dismissal.
- 1.19 **HEARING OFFICER.** The individual who is charged with the responsibility of hearing and deciding allegations of improper promotion, post-disciplinary action matters of demotion, suspension and dismissal.
- 1.20 **IMMEDIATE FAMILY.** Spouses, domestic partners, children, parents, siblings, grandparents, grandchildren, like in-laws, and like step-relationships and persons with legal custodial relationships.
- 1.21 **LAYOFF.** The involuntary separation of an employee from service without fault on the part of the employee, due to the abolition of a position, reorganization, lack of work, or lack of funds.
- 1.22 **MEDICAL DISABILITY DISMISSAL.** The dismissal of an employee from Village employment when the employee is unable to perform the essential functions of the position with reasonable accommodation(s) that do not impose undue hardship upon the Village, due to a medical condition, when there is corroborating documentation of this condition from a licensed health-care professional. Although Medical Disability Dismissal is not disciplinary in nature, employees are nonetheless entitled to participate in the Village's pre-determination and grievance procedures if they are subject to dismissal.
- 1.23 **PART-TIME EMPLOYEE.** An employee who works more than twenty (20) hours and less than forty (40) hours per week.
- 1.24 **PRE-DISCIPLINARY HEARING.** A hearing conducted by the Mayor or his/her designee before the imposition of the disciplinary actions of suspension, demotion or dismissal.
- 1.25 **PROBATIONARY EMPLOYEE.** A full-time or part-time employee hired to fill a regular position that has not yet completed the six (6) month probationary period of employment during which time the employee is terminable-at-will. During this probationary period the supervisor is required to evaluate the employee on at least a bi-monthly basis.
- 1.26 **PROMOTION.** A promotion is the change of an employee from a position in one classification usually to a position in a classification with a higher salary range.
- 1.27 **REGULAR EMPLOYEE.** Full-time: An employee who has successfully completed probation with a work schedule of at least forty (40) hours per week. Part-time: An employee who has successfully completed probation with a work schedule of more than twenty but less than forty (40) hours per week.

- 1.28 **RESIGNATION.** Resignation means the voluntary separation of an employee from service.
- 1.29 **SAFETY-SENSITIVE or SECURITY-SENSITIVE POSITION.** A safety-sensitive or security-sensitive position is a position approved as such by the governing body, including a supervisory or managerial position in which impairment by drug or alcohol use would constitute an immediate and direct threat to public health or safety and includes, but is not limited to, law enforcement officers, public works employees who regularly drive to pick up trash and to repair utilities, have access to confidential information and/or receive calls for public service, and employees who regularly transport other people as their principal job.
- 1.30 **SICK LEAVE.** Leave with pay granted to employees when personal illness, injury, pre-arranged medical or dental examination, quarantine, therapy, counseling or other necessary treatment keeps the employee from performing the duties of the position or when a member of the immediate family is ill, injured or requires treatment for the described reasons.
- 1.31 **SUPERVISOR.** As designated by the Organizational Chart, Amendment A, to this Policy. For purposes of additional annual leave under Section 10.3 of this Policy, "supervisor" does not refer to department directors who supervise only volunteers.
- 1.32 **SUSPENSION.** An involuntary leave of absence, with or without pay, for disciplinary reasons, or pending investigation of allegations made against an employee, or for pending determination of the grievance procedure.
- 1.33 **TEMPORARY EMPLOYEE.** An employee hired to fill a position that will temporarily fill a position that is vacant due to the absence of an employee or for some other requirement. Temporary employment will not exceed a six (6) month period. All temporary employees are terminable-at-will, do not accrue leave, and do not receive employee benefits.
- 1.34 **TERM EMPLOYEE.** An employee that is hired to fill a position for a specific time period based on governing body funding for a specified period of time, funding source or similar situation, not to exceed two years in duration.
- 1.35 **TRANSFER.** The voluntary or involuntary movement of an employee, from one department or office to another department or office in the Village service.
- 1.36 **UNCLASSIFIED EMPLOYEE (or At-Will Employee).** An employee who can be dismissed at any time, with or without cause. The terminable-at-will employees in the Village shall be: probationary employees; temporary employees; contract employees; the Clerk, the Marshal, and any subsequently created positions designated as such. Terminable-at-will employees are not entitled to the grievance procedures provided for in these Rules.

## **SECTION II: GENERAL PROVISIONS**

### **2.1 Position Specifications.**

The Village shall establish a set of position specifications for all positions. Position specifications shall include title, tasks, duties, responsibilities and minimum qualifications. They will also specify knowledge, skills, education, and abilities required of applicants.

### **2.2 Purpose.**

The purpose of these Personnel Rules and Regulations (Rules) is to establish consistent, basic policies and practices concerning relations between the Village and its employees. These Rules further establish the formal grievance procedure available to regular employees to hear their grievances with respect to promotions, demotions, suspensions, involuntary transfers and dismissal, and provide the method by which a personnel hearing officer is chosen to hear formal grievances. Independent contractors are not subject to the provisions of the Rules.

### **2.3 Scope.**

Definite rules and regulations cannot be readily formulated for every possible problem and situation. These Rules serves as a general basis and guide for the proper, efficient, and effective management and administration of personnel matters of the employees of the Village. The Rules contained herein replace and supersede all previously issued personnel rules, regulations and ordinances applicable to employees of the Village as the subject matter is covered in these Rules.

### **2.4 Amendment of Rules & Regulations.**

There shall be no resolution or other action of the governing body or other Village officials that is inconsistent with these Rules, except by amendment of these Rules. The Mayor or Clerk, upon authorization of the Mayor, may issue interpretative memoranda, administrative instructions, and forms that further detail the interpretation of these Rules.

### **2.5 Revision.**

Proposed revisions of these Policies shall be circulated by the Village Clerk to all employees at least fourteen (14) calendar days in advance of consideration for final approval by the Governing Body. Such notice shall provide opportunity for comment and shall include the date, time, and place of meeting at which the Governing Body intends final considerations. Revisions to these policies shall become effective upon approval by the Governing Body.

### **2.6 Employee Knowledge & Information of Rules & Regulations.**

The Clerk shall provide a copy of these Rules to present employees and to all new employees with instructions to read and be familiar with all provisions of these Rules. Employees shall sign for a copy upon receipt.



## **2.7 Equal Employment Opportunity Rules & Regulations.**

Individuals will not be discriminated against on the grounds of race, age, religion, color, national origin, ancestry, sex, marital status, physical or mental handicap, medical condition, sexual orientation or gender identity, in consideration for employment, promotions, transfers, duration of employment, compensation, terms, conditions, or privileges of employment by the Village.

## **2.8 Chain of Authority.**

The Organizational Chart, establishing the Chain of Authority is attached to this Policy as Amendment A and may be modified or abolished by the governing body.

## **2.9 Conflict Resolution.**

In order to maintain open communication between the Village and its employees and to ensure that employees' general working concerns, complaints, dissatisfaction, and conflicts are addressed quickly and efficiently, it is declared that employees have the right to present or make known these matters; free from interference, restraint, discrimination, coercion, or reprisal. This provision does not apply to serious complaints such as harassment, dangerous working conditions, workplace violence and discrimination, which are otherwise addressed by the policy.

### **2.9.1 Procedure**

Within five (5) working days following the date of incident giving rise to the conflict, an employee will seek to informally resolve the matter directly with the party or parties involved. If the situation cannot be resolved at that level, the employee will document the incident and attempts to resolve on a form approved by the governing body, which should include the date, time and place of the meeting, the parties in attendance, a statement of the problem, and a summary of the discussion including any proposed resolution.

Within ten (10) working days following the initial attempt to resolve, the employee will submit this documentation to the Mayor. The Mayor will investigate as s/he deems appropriate. Within ten (10) working days of receiving documentation from the employee, the Mayor will issue a written decision reflecting his or her findings and suggestions to all parties involved.

IF the Mayor's input is not satisfactory, the employee may submit the matter to the governing body within ten (10) working days of the Mayor's decision on a form approved by the governing body and attach thereto to the existing documentation. The governing body, as soon as practicable, may investigate and render its own decision reflecting findings and suggestions. The governing body will be the final source of review of an unresolved conflict.

In the absence of written extension of time limits for good cause, failure to meet deadlines by the employee will be considered an abandonment of the issue. If the employee resigns from Village employment during the time a matter is being investigated, the investigation will be terminated.

**2.10 Conflict with Collective Bargaining Agreements.** If any provision of this Resolution is in conflict with a written Employee Agreement duly adopted by the governing body pursuant to the Public Employee Bargaining Act [NMSA 1978, §§10-7E-1 to 10-7E-26], the terms of the

Collective Bargaining Agreement shall control.

## **2.11 Code of Ethics.**

### **A. The ethical village employee shall:**

1. Properly administer the affairs of the village.
2. Promote decisions that only benefit the public interest.
3. Actively promote public confidence in village government.
4. Keep safe all funds and other properties of the village.
5. Conduct and perform the duties of the office diligently and promptly dispose of the business of the village.
6. Maintain a positive image to pass constant public scrutiny.
7. Evaluate all decisions so that the best service or product is obtained at a minimal cost without sacrificing quality and fiscal responsibility.
8. Inject the prestige of the office into everyday dealings with the public employees and associates.
9. Maintain a respectful attitude toward employees, other public officials, colleagues and associates.
10. Effectively and efficiently work with governmental agencies, political subdivisions and other organizations in order to further the interest of the village.
11. Faithfully comply with all laws and regulations applicable to the village and impartially apply them to everyone.
12. Not allow children in designated work areas, particularly potentially dangerous areas or Village vehicles.

### **B. The ethical village official shall not:**

1. Engage in outside interests that are not compatible with the impartial and objective performance of his or her duties.
2. Improperly influence or attempt to influence other officials to act in his or her benefit.
3. Accept anything of value from any source that is offered to influence his or her action as a public official.
4. Conduct personal or commercial business while on duty.
5. Divulge legally confidential information acquired by virtue of employment.
6. Allow members of the public to use village property, equipment, or materials for personal use; including allowing unauthorized passengers while operating a village vehicle.
7. Commit any dishonest or fraudulent act against the village, including falsifying any village document.
8. The ethical village official accepts the responsibility that his or her mission is that of servant and steward to the public.

## **SECTION III: RECRUITMENT AND SELECTION**

### **3.1 Purpose.**

It is the policy of the Village to select and recruit the best qualified and the best-suited persons for all positions in an open and competitive manner, to ensure no discrimination and to ensure equal employment opportunity for all applicants and employees. The Village will comply with all applicable federal and state laws and regulations.

### **3.2 Order of Preference.**

The Village may recruit internally before or contemporaneously with publically announcing an open position pursuant to Section 3.3 as follows:

- (1) former Village employees returning from military leave of absence;
- (2) present employees;
- (3) former Village employees who were terminated due to job abolition and/or a reduction in force;
- (4) former employees who left employment with the Village in good standing;

All applicants who meet the above description must be fully qualified for the position pursuant to Section 3.5.

### **3.3 Recruitment of Applicants.**

The department director shall notify the Mayor and Village Clerk of the position to be filled. The Clerk shall issue job announcements through such media as the Village Website, job sites, professional associations, newspapers, postings, etc. deemed appropriate to ensure open and competitive recruitment of individuals with sufficient time to ensure reasonable opportunity for persons to apply. The Clerk shall submit announcements and receive all applications through the Village Office. All publications for job announcements shall include reference to the Village as "*An Equal Opportunity Employer*".

### **3.4 Temporarily Filling Vacant Positions.**

Vacant positions may be filled without public announcement by temporary employees on a temporary basis to replace regular employees on leave and pending the selection of a regular employee for a position or otherwise for a period not to exceed six months.

### **3.5 Best Qualified & Best-Suited Applicant Determinations.**

The best qualified and best-suited applicants are determined by the Mayor or his/her designee based on minimum qualifications of education, experience, abilities, skills and past work experience as specified in written position specifications for each position. Personal interviews

shall be conducted with at least three (3) applicants, or if fewer than three applications are received, all applicants shall be interviewed. Further, the Mayor or his/her designee may inquire of prior employers and references provided by the applicant as well as impartially test, written or orally, the applicants.

### **3.6 Selection.**

The Mayor will submit to the governing body up to three (3) of the highest-ranking candidates and, upon request, advise the governing body of additional candidates meeting the minimum requirements for the position.

The governing body will make final selection of the successful candidate. Upon notification of the selection, the Mayor will extend the offer of employment to the candidate and the Clerk will notify unsuccessful candidates as soon as practicable. The Clerk shall keep on file all recruitment and selection records of all applicants for a minimum of one (1) year following the date of receipt of application.

### **3.7 New Employee Orientation.**

The Clerk will conduct an orientation for new employees. On the employee's first day at work, he or she will report to the Clerk for orientation. Orientation will include an explanation of the benefits available to employees, the completion of the necessary employment forms, and the employee will sign for a copy of this Policy. Upon completion of orientation, the employee will be directed to the direct supervisor. The supervisor will acquaint the employee with the physical environment of the work area, review any technical rules applicable, and explain the employee's duties and practices, including the handling of hazardous materials.

### **3.8 Pre-Selection Prohibited.**

Posted and advertised positions shall not be promised to any person prior to recruitment and selection to ensure the integrity and fairness of the selection process.

### **3.9 Ineligibility for Hire and Rehire.**

Applicants may be considered ineligible for hire or rehire by the Village if the applicant has:

- A. knowingly made any false statement or omission on the employment application;
- B. not met the requirements of the position;
- C. failed to complete pre-employment drug and alcohol screening or physical examinations or other requirements as directed by the Village, except that an applicant not meeting drug and alcohol screening testing may reapply after a one-year period. An applicant who has failed a physical exam due to a pre-existing correctable medical condition may reapply at any time after the condition is corrected;
- D. not met the criteria for insurance or bonding as required by Village or state law;
- E. been dismissed from Village service as a disciplinary measure in five (5) years prior to the date of application;
- F. not been certified by a physician that the applicant can perform the physical requirements or the essential requirements of the position;

- G. does not have or cannot obtain a valid, non-interlock New Mexico Driver's License if the position requires use of Village vehicles;
- H. been convicted of a felony as described in NMSA 1978, §28-2-1, et seq. or convicted of a felony or infamous crime as defined in NMSA 1978, §10-1-3 and by its nature conflicts with the duties and responsibilities of the position; and,

This list is not exhaustive and may not include all of the reasons that would make an applicant ineligible for hire or rehire.

### **3.10 Testing.**

The Village may require an applicant to submit to testing for certain bona fide occupational qualifications to determine employment eligibility. This may include, without limitation pre-employment physical and drug and alcohol screening examinations for all but elected officials.

## **SECTION IV: CHANGES IN EMPLOYMENT STATUS**

### **4.1 Change in Employment Status**

Any change in employment status must be ultimately approved by the governing body.

### **4.2 Promotion.**

The Village encourages the professional growth of its employees and rewards the initiative, creativity, effort, commitment, and diligence of its employees through the promotional process. Village employees are encouraged to take advantage of promotional opportunities and apply for higher paying positions for which they qualify.

### **4.3 Evaluation Period.**

Regular employees who are promoted or voluntarily transferred between Departments to a vacant position will be placed in an evaluation period. An evaluation period is for ninety (90) days. If performance while on the evaluation period is deemed unsatisfactory, in writing, by the department director or Mayor, the employee may be returned to his/her previous position if that position is available; placed in another vacant position for which the employee is qualified; or dismissed at the discretion of the governing body if no such positions are available. Employees being transferred back to previous positions receive the same pay received before their promotion.

### **4.4 Demotion.**

An employee may be, but is not required to be, demoted to a position for which the employee is qualified when the employee would otherwise be dismissed because the employee's position is being abolished due to lack of funds or lack of work and there are no appropriate vacancies at the same level; when the employee's job is being reclassified; when the employee does not demonstrate the necessary ability to render satisfactory performance in the position presently held; or when the employee voluntarily requests such a demotion, provided there is a position available.

### **4.5 Transfers**

- A. **General Transfer.** Employees may be moved from one position to another of the same grade and pay range either voluntarily or involuntarily. An employee may be transferred if it is in the best interest of the Village. Involuntary transfers are not subject to the grievance procedure. Shifting department or office needs may require that an employee be temporarily or permanently transferred from one geographic location to another within a department. An employee may be transferred from one position to another position at the same salary range within a department or office. If such a transfer involves a probationary employee, time served in the former position shall be credited toward achievement of regular full-time status and salary increases, accumulated annual leave and sick leave shall be retained. The Mayor must approve all transfers.

- B. Voluntary Transfers between Departments. An employee who voluntarily transfers from one department to a vacant position in another department may be required to accept the new position at its entry level salary depending on his/her experience and qualifications required for the new position.
- C. Medical Transfer. An employee who has been certified by a licensed physician as being physically unable to perform the duties of the employee's current position may be transferred as reasonable accommodation to an available position in which the physician certifies the employee is able to work, and for which the employee is qualified to perform. If no such position is available, the employee is subject to the leave without pay provisions of these Rules.

#### **4.6 Resignation.**

An employee voluntarily resigning shall submit in writing to the department director, the Clerk, or the Mayor a two-week minimum notice of resignation. An employee's final paycheck may be withheld pending submission of a written notice of resignation. Unless unique circumstances exist, failure to provide timely written notice may be grounds for refusal of future employment with the Village. Unauthorized absence from work for a period of three (3) consecutive regularly scheduled working days shall be considered a voluntary resignation.

#### **4.7 Layoff Procedure.**

Upon directive of the Governing Body, the Mayor shall make the determination for layoffs after consulting with department directors. When layoffs of more than one employee are required, layoffs shall be determined using the following criteria:

- A. Position in order of priority:
  - 1. Temporary employees,
  - 2. Probationary employees,
  - 3. Casual employees,
  - 4. Part-time employees;
- B. Performance of the employee compared to other employees being laid off in the same or similar positions;
- C. Value of the employee's position to the critical operation of the Village or department, such as safety-sensitive or security-sensitive positions;
- D. Length of continuous service with the Village; and
- E. Funding source.

#### **4.8 Layoff Return Privileges.**

Any full-time or part-time regular employee who is laid off and returns within twelve (12) months of layoff shall not have to serve a probationary period if the employee returns to his/her previous position and the probationary period has been served. A laid off-returning employee will be credited for all unused sick leave remaining and not compensated for at the time of layoff if the employee returns within the twelve (12) month period. Layoff privileges end:

- A. Twelve (12) months after the effective layoff date;

- B. After an employee has refused employment in a position for which the employee is qualified and/or for which the pay rate is the same or higher than the position previously held; or
- C. When a laid off employee accepts another position with the Village. A laid off employee accepting another position with the Village shall serve the required evaluation period.

#### **4.9 Medical Disability Dismissal.**

Employees shall be involuntarily terminated upon completion of the twelve-week family/medical leave if the employee is physically unable to perform the essential duties of the employee's position with reasonable accommodation(s) that do not impose undue hardship upon the Village, as certified by a qualified, licensed physician. The provisions of this subsection are subject to the provisions regarding Workers' Compensation laws and "On the Job Injury Leave" found in Sections 10.13 and 10.14 of these Rules.

#### **4.10 Reinstatement.**

Individuals that are reinstated as regular employees to the same or like position are not entitled to any previous benefits such as sick leave which may have been accrued during previous employment with the Village except as provided in Section 7.



## **SECTION V: CONDITIONS OF EMPLOYMENT**

### **5.1 Probationary Period for New Hires.**

An employee hired to fill a position, including temporary employees who had previously filled the position, shall serve a probationary period of six (6) months, beginning on the first day of work, during which time the employee is terminable-at-will.

- A. Law enforcement officers in the Marshal's Office shall serve a one (1) year probationary period if hired as uncertified, beginning on the first day of work, during which time the employees are terminable-at-will. If a law enforcement officer is not certified prior to hiring, the law enforcement officer must obtain law enforcement certification within one year of employment. Uncertified law enforcement officers shall be terminated on the six-month anniversary of hire if they are not accepted or enrolled in a basic police officer training program certified by the Law Enforcement Academy. Certified law enforcement officers will serve a six (6) month probationary period.
- B. The probationary period is an integral part of the evaluation process and is utilized for observing the employee's performance and obtaining the most effective adjustment of a new employee to the position. Employees will be evaluated at least bi-monthly during the probationary period. The employee must achieve a satisfactory performance or better by the end of the probationary period before the employee can become a regular employee entitled to all of the rights and benefits of that status.
- C. If the employee satisfactorily completes the probationary period, the employee will become a regular employee. If the employee does not satisfactorily complete the probationary period, the employee may be dismissed, or upon the recommendation of the Mayor with final approval of the governing body, the probationary period may be extended for a period of ninety (90) days.

A probationary employee:

- A. can be dismissed, without cause, at any point during the probationary period;
- B. is not eligible for personal leave;
- C. cannot challenge disciplinary actions;
- D. is allowed to use sick leave as soon as it is accrued with approval of supervisor, but may not accrue annual leave until the probationary period is satisfactorily completed;
- E. is not paid for accrued sick leave upon termination;
- F. is eligible for health insurance.

### **5.2 Former Village Employees Hired to a Position.**

A former Village employee re-hired in the same or like position or re-hired at any time to fill a new position, shall serve the required probationary period.

### **5.3 Personnel Conduct**

A. Employee Behavior. The Village expects that the behavior of each of its employees shall be proper and above reproach. Conduct that interferes with the Village's operations, that brings

discredit to the Village, or that is generally offensive to the public or fellow employees will not be tolerated.

**B. Attendance and Punctuality.** All Village employees are expected to adhere to their work schedules with regularity and punctuality. There may be times, however, when employees will be unable to report for work, or to report on time due to illness, accident, or an emergency situation. Such occurrences should be kept to a minimum.

**C. Personal Appearance.** In order to project the proper image to the public, it is essential that all employees be neatly groomed, bathed, and tastefully dressed at all times. Supervisors shall determine the appropriate attire for employees. Employees who fail to follow the established guidelines shall be subject to disciplinary action.

**D. Public Relations.** All employees shall deal with the public and fellow employees in a patient, courteous, and helpful manner and shall represent the Village in a positive way.

#### **5.4 Permitted Political Activities.**

All employees:

- A. may engage in political activity on their own time;
- B. are encouraged to register to vote, and to exercise the right to vote;
- C. have a right to express their opinion on all political subjects and candidates;
- D. may serve as convention delegates;
- E. may sign nominating petitions and make voluntary contributions to political organizations; and
- F. may serve as an election or poll official, but must take unpaid administrative leave to do so.

#### **5.5 Prohibited Political Activities.**

All employees, department directors and elected officials are prohibited from:

- 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.
- B. Directly or indirectly coercing, attempting to coerce, commanding or advising a state or local official or employee to pay, lend, or contribute anything of value to a party, committee or organization, agency, or person for a political purpose.
- C. Threatening to deny promotions to any employee who does not vote for certain candidates, requiring employees to contribute to a political fund, influencing subordinate employees to buy tickets to political fund-raisers and similar events, advising employees to take part in political activity and matters of a similar nature.
- D. Engaging in political activity while on duty.
- E. Using any Village-owned equipment, supplies, vehicles, space or property for political purposes.

## **5.6 Public/Political Office**

- A. Employees covered by the provisions of the Hatch Act [5 U.S.C. Sections 1501 to 1508] may not be candidates for partisan political office elections.
- B. A prospective candidate for office must self-report to the Office of the Special Counsel of the Department of Justice for a determination as to whether the prospective candidate is covered by the Act, and whether the candidacy and continued employment with the Village violates the Hatch Act. The prospective candidate must at all times comport with the requirements of the Hatch Act as the Act may be interpreted by the Office of the Special Counsel.
- C. Employees may be candidates for nonpartisan political office, subject to the restriction set forth in subsection B of this section.
- D. Being a local school board member or a member of any post-secondary educational institution's board shall not be construed as holding political office.
- E. Employees may not hold a Village political office and be a regular full-time, or at-will full-time, employee with the Village.

## **5.7 Nepotism.**

In addition to following NMSA 1978, Sections 10-1-10 and 10-1-11, in order to avoid the practice or appearance of nepotism in employment, near-relatives shall not work in the same department when there is a supervisory relationship between them.

- A. Near-relatives, as used in this ordinance, includes father/mother and spouse, son/daughter and spouse, grandparents, grandchildren and spouse, uncle/aunt and spouse, first cousin and spouse, nephew/niece and spouse, brother/sister and spouse. This also includes unrelated persons sharing a spousal/domestic partner relationship as well as adopted, step relatives in the relationships listed above.
- B. When there is a change in assignment or relationships among Village employees, which lead to the supervision of or by other near-relatives, the employee must inform the elected official or department director in writing within five (5) working days. The elected official and department director, subject to the approval of the Mayor, will remove the employee from the supervision of a near relative within five (5) working days. Such action may include involuntary transfer of the employee to another position, demotion of the supervisor or termination of the employee. The change in supervision will be documented in both employees' files.

## **5.8 Conflict Ban.**

No employee shall 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, or which gives the appearance of impropriety, or is prohibited by federal, state or county law or village policy.

## **5.9 Outside Employment.**

Employees may not, directly or indirectly, engage in any outside employment or financial interest which may conflict, in the Village's opinion, with the best interests of the Village or

interfere with the employee's ability to perform his/her assigned Village job. Examples include, but are not limited to, outside employment which:

- A. Prevents the employee from being available for work beyond normal working hours, such as emergencies or peak work periods, when such availability is a regular part of the employee's job;
- B. Is conducted during the employee's work hours;
- C. Utilizes Village telephones, computers, supplies, or any other resources, facilities or equipment;
- D. Constitutes employment, contractual commitment or self-employment which conflicts with Section 14.11, below; or
- E. May reasonably be perceived as a conflict of interest, gives the appearance of impropriety or otherwise discredits public service.

An employee who chooses to have an additional job, contractual commitment or self-employment may do so, provided s/he provides prior notification to his/her department director. With the input of the supervisor(s), the Mayor is authorized to give prior approval to the employee to engage in the proposed occupation. If, after accepting outside employment, situations arise which could interfere with the employee's job, the employee needs to immediately report these situations to his/her department director.

#### **5.10 Workplace & Sexual Harassment.**

- A. The Village is committed to taking reasonable steps to provide a professional working environment free from all forms of harassment, whether based on sex, sexual orientation, gender identity, race, color, religion, national origin, age, disability or any other protected classification. Although this section focuses on sexual harassment, it applies equally to all forms of harassment based on a protected classification and the procedures described in this policy shall be followed for all such harassment. This policy also applies when a Village employee is subject to harassment in the workplace by someone outside the Village.
- B. All Village employees and members of the public have a right to be free from harassment from employees on official duty for the Village. Village employees are forbidden from engaging in harassing conduct in the workplace. Employees are also forbidden from engaging in conduct outside of work that creates a hostile work environment at work. Any act of harassment based upon a protected classification is a violation of village policy.
- C. Definition: According to the EEOC, sexual harassment is any unwelcome sexually oriented behavior, demand, comment or physical contact initiated by any individual at the work place when:
  - 1. Submission to such conduct is made either explicitly or implicitly, a term or condition of an individual's employment;
  - 2. Submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions/opportunities affecting such individual, or
  - 3. Such conduct has the purpose or effect of substantially interfering with an individual's work performance, or creating an intimidating, hostile or offensive working environment.

### **5.11 Responsibility to Report Harassment.**

Any employee who believes they are a victim of harassment should first confront the person or persons responsible for the offensive behavior and indicate that it is unwelcome and should be stopped. The employee also has an obligation to promptly report the matter to their department director. All employees who observe, or become aware of harassment, also have an obligation to bring the matter to the attention of the applicable department director, even if they are not the victim of harassment.

- A. **Investigation of Complaints.** It is the Village's intent to provide a fair process for investigating and resolving complaints of harassment. The Village will investigate all reports of alleged harassment. Information associated with the investigation will be kept confidential, to the extent possible, and consistent with the Village's obligation to investigate promptly and thoroughly. All employees are required to cooperate with any investigation by the Village in response to an allegation of harassment. Refusal to cooperate in an investigation may result in disciplinary action, up to and including termination.
- B. **Appeal.** Any affected employee dissatisfied with the conclusion or results of an investigation, or with any corrective measures taken, may appeal the decision to the Mayor. Any such appeal should be in writing and must include the nature of the employee's dissatisfaction with the conclusions or results of the investigation. Any qualifying disciplinary appeal must follow the grievance process.
- C. **Protection Against Retaliation.** The Village will not retaliate against an individual who reports sexual harassment in good faith and such retaliation in and of itself is grounds for disciplinary action, up to and including termination without prior progressive discipline. Retaliation is a serious violation of this policy and should be reported immediately.
- D. **Discipline.** Unlawful harassment, including sexual harassment, of employees, or members of the public, may be cause for dismissal. If the Village determines that harassment has occurred or that counseling, training, disciplinary measures or termination are appropriate, it will take appropriate measures to correct the problem following disciplinary procedures. Serious cases of harassment constitute cause for termination without prior progressive discipline. Employees who knowingly make false allegations of sexual harassment may be subject to disciplinary action.
- E. **Vendors and Customers.** Employees should report sexual harassment from vendors, customers, other village employees and the general public utilizing this Policy.

## SECTION VI. PERFORMANCE EVALUATIONS

### 6.1 Objectives.

The main objective of a performance evaluation program is to create and maintain a climate of mutual understanding and respect between supervisors and their employees. Such a climate is conducive to open communication and provides the motivation for employees to put forth their best efforts. Supervisors must also establish a relationship that is supportive of their employees and one that aids in their growth and development.

### 6.2 Probationary Employees.

Probationary employees will be evaluated pursuant to Section 5.1. It is imperative that the evaluation process be completed prior to the end of the employee's sixth month date. It is this evaluation that may determine whether or not the employee will be retained and granted regular status, whether the period of the probation will be extended, or whether the employee will be dismissed.

### 6.3 Regular Employees.

**A. Annual Evaluations/Exceptions.** Employees other than probationary employees shall be evaluated at least annually, ideally on or about the employee's anniversary date and may be evaluated upon the following conditions:

1. A change of status.
2. Along with a recommendation of any type of salary increase, including step increases if available.
3. Demotion, suspension or corrective action.
4. Any other time that a supervisor wishes to make the performance of an employee a matter of record.

**B. Forms.** Performance Evaluation forms will be promulgated and approved by the governing body with input from supervisors.

**C. Evaluation.** The supervisor will complete the Performance Evaluation and will notify the employee of the date, time, and place of the meeting to review the evaluation with the employee. At this meeting, the supervisor(s), the employee, and the Mayor if available, will discuss the evaluation of the employee's performance since the last evaluation, and will jointly establish and set forth on the Performance Evaluation form the critical goals, objectives, and major areas of accountability upon which the employee's performance will be evaluated during the next evaluation period. When rating an employee's performance, the supervisor must clearly state the reason for the rating, citing specific facts relating to the standards used to measure performance. All parties present will sign both forms and cause them to be placed in the personnel file by the Clerk.

**D. Job Descriptions.** A copy of the job description will be attached to the Performance Evaluation form. Job descriptions must include use of Personal Protection Equipment (PPE) if required by the nature of the job. During the evaluation process, the employee and the supervisor(s) shall review the job description. If any changes are necessary, they

will be submitted to the Clerk who will present the revised job description to the governing body for final approval. If no changes are required, the copy of the job description shall be returned to the Clerk marked "Received—No Change".

- E. **Rebuttal.** The employee may submit a written rebuttal statement to the performance evaluation that will be attached to and become a part of the performance evaluation. The rebuttal shall be submitted within ten (10) days of the evaluation.
- F. **Unsatisfactory Evaluation.** In the event a regular employee receives an overall evaluation of unsatisfactory performance, the employee shall be warned that the failure to meet reasonable performance standards of the position within a set time period, not to exceed ninety (90) days, may result in dismissal. This process does not apply to probationary evaluation.
- G. **Pay Increases.** Dependent on allocation of funds by the governing body, regular employees who meet or exceed expectations are eligible for pay increases, while employees who are not meeting expectations are not so eligible.

## **SECTION VII: BASIS FOR EMPLOYEE DISCIPLINE**

### **7.1 Discipline.**

Disciplinary actions for employees are based on just cause, in order to promote the efficiency of the services rendered by the Village 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, color, national origin, ancestry, sex, sexual orientation, physical or mental handicap or medical condition. No employee will be disciplined for refusing to perform an unlawful act.

### **7.2 Definition of Just Cause.**

Just cause is defined as 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 Village and reflects the employee's disregard of the Village's interest. Just cause includes, but is not limited to, inefficiency, incompetence, misconduct, negligence, insubordination, performance which continues to be inadequate after reasonable efforts have been made to correct the performance problems, or conviction of a felony or misdemeanor involving moral turpitude and the misdemeanor conviction directly relates to the employee's particular job, trade, or profession.

### **7.3 Progressive Discipline.**

An employee shall be progressively disciplined whenever warranted. All actions involving substandard work performance, leading up to and including dismissal, require documented progressive discipline. The step of corrective action used depends on the severity of the infraction and the employee's previous work record. Because of the serious nature of some infractions, the first disciplinary action may be suspension or dismissal. Typically, the third reprimand; including verbal, written, suspension, demotion, unsatisfactory performance evaluation, or any combination thereof within a twelve (12) month period, will result in dismissal.

### **7.4 Disciplinary Action by Mayor or Supervisor.**

The Mayor and his or her designee, and department directors have the authority to discipline an employee under their supervision. Copies of any written disciplinary action must be furnished to the Clerk's office for placement in the employee's file, with evidence of the employee's receipt of the action.

#### **7.4.1 Verbal Reprimand.**

A verbal reprimand is used for minor infractions to inform the employee that his/her actions, behavior or conduct needs to change. Employees should not receive repeated verbal reprimands for the same or similar behavior; rather, discipline should be progressive. Supervisors will keep written notations of verbal reprimands and will place the written notation of the verbal reprimand in the employee's personnel file. Causes for verbal reprimands include, but are not limited to:



- A. substandard or unsatisfactory work performance;
- B. repeated absence or tardiness;
- C. misconduct on the job;
- D. failure to meet and/or maintain job requirements as set forth in the job description, especially including the failure to properly and consistently use PPE if required;
- E. violation of any personnel rules, policies, or regulations, including rules of a particular department within the Village;
- F. violation of a professional code of ethics accepted by those in the same profession as an employee and as stated in this policy;
- G. non-cooperation by an employee with fellow employees or other personal conduct which substantially interferes with the performance of his/her or another employee's work;
- H. failure to adhere to an established work schedule;
- I. violation of Section XII of this Policy;
- J. excessive personal cell phone usage; and
- K. failure to obtain authorization for overtime.

#### **7.4.2 Written Reprimand.**

An employee shall 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. Causes for written reprimands include, but are not limited to:

- A. the causes listed for verbal reprimands, above;
- B. excessive absence or tardiness;
- C. sleeping on the job;
- D. negligence in the performance of duty including negligence in the operation of Village vehicles or equipment;
- E. negligence or failure to adhere to established safety rules or regulations as well as willful unsafe conduct;
- F. insubordination and failure to comply with the lawful orders of a supervisor including the refusal to accept after hours assignments;
- G. unauthorized absence from work;
- H. harassment;
- I. failure to report duty injuries, accidents or vehicle collisions;
- J. failure to follow the chain of command within a department;
- K. unauthorized use or abuse of Village property (e.g. phones, cell phones, computers, vehicles, equipment, etc.).
- L. being untruthful when asked about any work-related activities by a supervisor;
- M. abuse of sick leave, including use of sick leave on a day for which vacation or other leave has been denied;
- N. failure to follow a departmental SOP; and
- O. violation of the Code of Ethics (Section 2.10).

Written reprimands for an employee's work performance or conduct shall be placed in the employee's personnel file 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. If the employee refuses to sign, said refusal to sign shall be noted on the document by the employee's elected official or department director, and a witness shall attest in writing that the

statement was presented for signature to the employee, who refused to sign. A supervisor's signature, witness' signature, or employee's signature indicates that the employee received the statement, but does not necessarily indicate concurrence with its content. In addition, the elected official or department director may read the letter of reprimand to the employee. The employee may respond with a written rebuttal within ten (10) days after the document was entered into the personnel file, which shall also be placed in the employee's personnel file. The placement of a written reprimand in an employee's file is not grievable.

## **7.5 Suspension.**

The Mayor or his designee may suspend an employee until the next regular meeting of the governing body at which such meeting the governing body will approve or disapprove the suspension if time has passed for the employee to file a Grievance; temporarily approve or disapprove the suspension if time has not passed for the employee to file a Grievance; or, appoint a hearing officer, conduct a grievance hearing, or schedule a grievance hearing for an employee who has filed a Grievance.

**7.5.1.** 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. Such suspension will not exceed two-hundred forty (240) hours. Suspension of an employee is subject to the formal grievance procedures. Causes for suspension include but are not limited to:

- A. the causes listed for verbal and written reprimands, above;
- B. continuous documented instances of poor performance;
- C. negligent damage to property and/or person(s);
- D. physical or mental unfitness for duty;
- E. consumption or possession of alcohol or controlled substances on-duty or on Village property or in Village vehicles;
- F. fighting while on-duty or on Village property;
- G. harassment;
- H. sexual harassment;
- I. failure to report confiscation or loss of driver's license when required as condition of employment;
- J. operation of a Village vehicle or a private vehicle while on Village business without a valid driver's license; and
- K. unlawful carrying or possession of a firearm unless authorized by state law or county policy.
- L. being under the influence of alcohol or controlled substance including illegal drugs as well as abuse of prescription drugs. See Section 11.
- M. Knowingly making any false statement or omission to a supervisor regarding work-related activities.

## **7.6 Demotion.**

An employee may be demoted for continued inadequate job performance after previous attempt(s) to correct the conduct have failed, provided that there exists a lower job position in the Village and the employee is capable of performing such a job. The demotion of an eligible

employee is subject to the formal grievance procedures. A demotion may require a decrease in salary.

## **7.7 Dismissal.**

The Mayor or his designee may dismiss an employee until the next regular meeting of the governing body at which such meeting the governing body will approve or disapprove the dismissal if time has passed for the employee to file a Grievance; temporarily approve or disapprove the dismissal if time has not passed for the employee to file a Grievance; or, appoint a hearing officer, conduct a grievance hearing, or schedule a grievance hearing for an employee who has filed a Grievance.

### **7.7.1**

The governing body may conduct or order an investigation, formal or informal, into employee conduct potentially warranting dismissal under this policy; and, either dismiss the employee by a majority vote of all members, or, if the employee is subject to this Policy, appoint a predetermination hearing officer, and by majority vote of all members, dismiss an employee subject to the grievance procedures herein.

### **7.7.2**

Dismissal is the final consequence when progressive discipline has failed to change unacceptable behavior or performance, or when the employee has engaged in other behavior that is of a serious nature that is unacceptable for Village employees. The dismissal of an employee is subject to the formal grievance procedures. Causes for dismissal include, but are not limited to:

- A. all causes listed for the previous disciplinary actions, if such causes continue after attempts or correction have failed;
- B. acceptance of a bribe, gratuity, gift, or kick-back;
- C. abuse of official position or authority for personal profit or advantage;
- D. theft, abuse or intentional destruction of Village property, including electronic media or data;
- E. unauthorized disclosure of confidential information from Village records or documents as set forth by applicable state law; falsification, destruction or unauthorized use of Village records, reports, or other Village data, including electronic media or data;
- F. being convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction directly relates to the particular job, trade, or profession;
- G. being convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction does not directly relate to the particular job, trade, or profession, if the Village determines after investigation that the person so convicted has not been sufficiently rehabilitated to warrant the public trust;
- H. falsification of Village employment application, health history forms or any other document used in the employment process;
- I. serious acts of negligence causing damage to Village property or injury to an employee;
- J. conduct unbecoming an employee of the Village;
- K. engaging in conduct prohibited under the Village's Drug-Free Workplace Policy as provided in Section 11, below;

- L. insubordination or refusal to carry out reasonable directives;
- M. failure to meet standards of substance abuse rehabilitation programs;
- N. loss of license or certification necessary to legally perform the duties of the employee's position.
- O. determination of Hatch Act violation by Office of Special Counsel;
- P. behavior that demonstrates deliberate violations of policy, wrongful intent, evil design, or so as to reveal intentional and substantial disregard of the Village 's interests, or of employee's duties and obligations to the Village of Magdalena.
- Q. willful falsification of, or misrepresentation on, any work records; falsifying data or information requested by the Village; forgery or inappropriate alteration of Village records or other Village documents (including written or audio or audio-visual media).

### **7.8 Examples Not Inclusive.**

The above examples are typical of the types of infractions sometimes encountered but are not inclusive of all situations that may arise. The Village reserves the right to exercise judgment and render disciplinary action or dismissal as deemed appropriate based on the circumstances of each case.

### **7.9 Pre-Determination (Loudermill) Hearing.**

Regular employees shall receive a pre-determination hearing prior to possible disciplinary action for cause or other action that may result in suspension without pay, demotion, and loss of pay, or involuntary transfer or dismissal. Prior to delivery of the written notice to the employee, the Village representative shall review the cause for such action and may require the proposed level of discipline be increased or decreased based on policy and past action.

### **7.10 Written Notice.**

The employee shall be presented with the written notification of the intent to conduct a pre-determination hearing at least five (5) working days in advance of the hearing date. The written notification shall explain the reasons for the hearing, the proposed discipline, the employee's right to attend the pre-determination hearing, a list of all evidence and/or witness to be introduced supporting the Village's position, the time, place and date of the pre-determination hearing and the employee's right to respond to the proposed action. The time, place and date of the pre-determination hearing can be revised upon the written agreement of the parties.

### **7.11 Immediate Suspension with Pay.**

In cases where Village property, other employees or citizens or their property are at risk because of the employee's actions, the Mayor or in his/her absence, an appointed designee shall put the employee on administrative leave with pay until the pre-determination hearing is held and a decision is rendered. Any employee who is placed on administrative leave pending disciplinary action will be required to be away from their place of employment and will not be allowed to perform any job-related duties or retain any Village property during that time. Administrative leave pending disciplinary action shall not exceed thirty (30) calendar days, unless an extension of time is approved by the governing body. In no event shall the employee represent themselves

as an employee of the Village or use any certification possessed on behalf of the Village, if suspended pursuant to this paragraph.

#### **7.12 Pre-Determination Hearing Procedure.**

The Mayor or his/her designee, or member of the governing body shall meet with the appropriate supervisor(s), and the employee if he or she chooses to participate, at the appointed time. The Village Attorney may be present to assist but shall not advocate at this point. Legal counsel for the employee may also be present. At this hearing the employee will have an opportunity to respond to the reasons for the proposed action. Witnesses are permitted as determined relevant to the case by the Mayor or his/her designee. If an employee does not attend the pre-determination hearing and no good cause is shown for his/her absence, the hearing shall proceed as scheduled and a determination may be made.

#### **7.13 Pre-Determination Hearing Decision.**

The Mayor, member of the governing body, or their designee, will issue a decision in writing within ten (10) working days of the hearing. The decision will include the time, date and location of the meeting, persons present, and the determination. The written decision shall be either delivered to and signed by the employee, or sent to the employee by certified mail, return receipt requested. If the decision is made to dismiss the employee, the employee will be placed on unpaid administrative leave until approval or disapproval is obtained by the majority of all members of the governing body.

#### **7.14 Notice of Appeal.**

Within five (5) working days of receipt of the written decision, the employee must notify the Clerk or his/her designee in writing of his/her intent to pursue a grievance hearing.

## **SECTION VIII: GRIEVANCE PROCEDURES**

The formal grievance procedure is applicable for promotion, suspension, demotion, involuntary transfer or dismissal of employees covered by this section. An appeal shall not stay the implementation of the pre-determination hearing decision.

### **8.1 Conditions or Actions Not Grievable.**

The following matters are not grievable:

- A. disputes as to whether or not an established Village practice or rules are valid;
- B. matters in which a method of review is mandated by law;
- C. matters where the Village is without authority to act or does not have the ability to provide a remedy;
- D. dismissal of temporary, casual, or contract employees and dismissal of appointees, such as the Clerk and Marshal, dismissed at any point during their employment with the Village;
- E. preferences for employment, promotions, voluntary transfers, temporary assignments, and removal from temporary assignments, and layoffs;
- F. dismissal of a probationary employee prior to the expiration of the probationary period;
- G. letters of complaint when the employee's department director or supervisor determines the letters are justified and appropriate to be placed in the employee's personnel file, so long as the procedure for written reprimands are followed including the employee's right to submit a rebuttal;
- H. written reprimands in the employee's file, although within ten (10) days the employee is allowed a rebuttal of the information contained in the reprimand which will be attached to the written reprimand;
- I. denial of permission for outside employment;
- J. performance evaluations;
- K. suspension from employment for three days or less.

### **8.2 Employees Not Eligible for Grievance Procedure.**

Unclassified, temporary, casual, probationary or contract employees are not eligible to request a grievance hearing.

### **8.3 Grievance Procedure.**

A regular employee may request, in writing, a hearing before the governing body within five (5) working days of receiving the decision resulting from the pre-disciplinary process or from other action as may be grievable under this Policy. The request will state with specificity the reason for the grievance and the remedy requested.

### **8.4 Appointment of Personnel Hearing Officer.**

Within fifteen (15) working days of the grievant's notification of intent to pursue a disciplinary hearing, the governing body, at its sole discretion, may designate an impartial hearing officer to

hear the grievance in their stead. The Clerk or his or her designee will cause the grievant to be notified of the appointment and the name of the Hearing Officer. Otherwise, the governing body will hear the grievance.

### **8.5 Hearing Officer Qualifications.**

Hearing Officers shall be personnel professionals, be familiar with public or private personnel systems, or have pertinent experience in the fields of management, education or law. The Hearing Officer shall be disinterested in the subject matter of the hearing. The Clerk shall verify the qualifications of the hearing officer. The hearing officer is not required to reside in the Village.

### **8.6 Grievance Hearing Schedule.**

The Clerk will schedule a hearing to be held within thirty (30) days of the notification that the employee wants to pursue a grievance hearing. In the event no qualified Hearing Officer (if appointed) is available within the thirty (30) day limit, the hearing will be held at the first opportunity. At this hearing, the grievant shall have an opportunity to present witnesses and physical evidence and cross-examine the Village's witnesses before a neutral hearing officer or the governing body. The grievant and the Village may be represented by legal counsel.

### **8.7 Grievance Hearing Procedures - Rules of Procedure.**

- A. The hearing will not be open to the public.
- B. The hearing officer or governing body shall:
  - 1. make rulings on procedural and substantial issues of the hearing;
  - 2. determine the admissibility of evidence and testimony, all of which must have a direct bearing on the issue; and
  - 3. issue a written ruling, including findings of fact, which form the basis of the conclusions of law.
- C. The grievant, the grievant's legal representative, if any, and the Village Attorney are required to be present at the hearing unless otherwise excused by the governing body or hearing officer or by agreement of the parties.
- D. At least five (5) working days prior to the hearing, the parties or their representatives shall prepare and provide copies of all exhibits and evidence for the governing body or hearing officer as well as the opposing party. Exhibits and evidence not supplied in the manner detailed above shall be excluded from consideration.
- E. At least five (5) working days prior to the hearing, all parties must submit to the hearing officer or governing body a confidential statement identifying the issues to be heard, a witness list, and a complete list of documents to be admitted as evidence. Further, at least five (5) working days prior to the hearing, witness lists and exhibits shall be exchanged between the parties.
- F. Each party will be responsible for ensuring that their witnesses are present for the hearing.
- G. Witnesses in grievance hearings are not permitted in the hearing room until called upon to testify, unless the witness is a party (i.e., the grievant, the grievant's supervisor, or Village Attorney).
- H. An audio or audio-video record of all grievance hearings will be made.

### **8.8 Conduct of Hearing.**

The Grievant shall present an opening statement of issues involved in the case, followed by the Village. Opening statements are limited to the pertinent issues of fact and law and shall not exceed ten minutes without the permission of the governing body or hearing officer.

### **8.9 Order of Presentation.**

- A. The Village will present first. Witnesses for the Village may be called and questioned concerning their involvement in or knowledge of the case. Following each witness's testimony, the Grievant will have the opportunity to cross-examine the witness. The hearing officer or governing body will then have an opportunity to question the witness. The hearing officer or governing body shall restrict all questions to those necessary to clarify the testimony previously given. Follow up or redirect questioning will be allowed at the discretion of the hearing officer.
- B. Witnesses for the Grievant may be called and questioned concerning their involvement in or knowledge of the case. Following each witness's testimony, the Village will have the opportunity to cross-examine the witness. The hearing officer or governing body will then have an opportunity to question the witness. The hearing officer or governing body shall restrict all questions to those necessary to clarify the testimony previously given. Follow up or redirect questioning will be allowed at the discretion of the hearing officer or governing body.
- C. Following the presentation of the Village's and the Grievant's positions, rebuttals may be offered. Such testimony shall be brief and shall address only the issues brought forth in the Village's or Grievant's presentation.
- D. The Village's closing statement shall be presented followed by the Grievant's closing statement. These statements shall not exceed ten (10) minutes without the permission of the hearing officer or governing body and shall contain a request for the desired outcome.

### **8.10 Communication of Decision.**

The decision of the hearing officer or governing body will be issued within thirty (30) working days of the hearing and will be signed by the hearing officer or a member of the governing body and transmitted to the grievant and the grievant's supervisors. The hearing officer or governing body may uphold, modify or reverse the decision of the Mayor, and may reinstate the employee and award back pay and benefits. No attorney's fees, costs or other damages may be awarded. The standard of proof in a grievance hearing is a preponderance of the evidence. The record of the proceedings will be retained by the Village Clerk's office for a period of not less than five (5) years from the hearing date along with all of the physical evidence admitted by the hearing officer. The verbal record may be transcribed only in the case of appeal to the District Court by one of the parties. The party requesting the transcription shall pay for the transcription.

### **8.11 Appeal of Decision.**

The employee may appeal the governing body or hearing officer's decision to the District Court by filing with the District Court a Notice of Appeal within thirty (30) calendar days of the decision, making service on the Clerk. If a Notice of Appeal is not timely filed, the employee



**will be estopped from appealing the decision. The appeal shall be a review of the record based on whether the Village's decision was arbitrary, capricious, or otherwise contrary to law.**

## **SECTION IX: COMPENSATION & BENEFIT PROGRAM**

### **9.1 Purpose.**

The purpose of the compensation plan is to establish equitable compensation for all positions in the Village. Such a plan may establish a salary schedule containing a minimum and maximum wage or salary for each position. Pay ranges are intended to furnish administrative flexibility. However, all wages and salaries are approved by the governing body during the budget process or otherwise. The governing body has sole authority to budget and authorize wage and salary increases. The governing body acknowledges all changes in compensation and may set pay schedules and Rules regarding any raises and promotional increases for the entire fiscal year for all Village employees.

### **9.2 Hours of Work.**

Employees will work their scheduled hours pursuant to work schedules established by their supervisors. Full-time employees will work a minimum of forty (40) hours per week. Actual work periods may fluctuate at the discretion of the supervisor with the approval of the Mayor.

### **9.3 Overtime Pay.**

Only FLSA non-exempt employees shall be compensated for all time actually worked, whether or not the time is authorized. Failure to obtain authorization for overtime shall result in disciplinary action, up to and including dismissal. The rate shall be one and one-half (1½) times regular pay for each hour of overtime and such payment shall be made only in cases when an FLSA non-exempt employee works over forty (40) "actual hours" in a normal work week. Only actual time worked will be used to calculate overtime; holiday, annual, sick and other leave hours shall not be considered actual working hours.

#### **9.3.1 Policy.**

All personnel and appointees of the Village must be mindful of and exercise fiscal responsibility in the use of public funds and resources. Overtime pay requires particular attention because it constitutes a sizeable expenditure of Village revenue that is provided at premium rates. Without adequate controls, unplanned expenditures can create budget overruns and divert resources from key operational areas. Therefore, it is the policy of the Village to effectively manage the use of overtime and that each department and employee will use overtime in a responsible and judicious manner and to fully comply with the Fair Labor Standards Act.

#### **9.3.2. Procedure.**

At the discretion of the governing body, the Mayor, elected official, or direct supervisor; employees may be required to work in excess of forty (40) hours in a one-week pay period. Prior approval of overtime must be given by the direct supervisor responsible for the employee unless unreasonable due to emergency circumstances.

The employee's direct supervisor, unless that person is the Mayor who has already given approval, must first obtain the prior approval of the Mayor or his or her designee before authorizing the employee to work overtime. Only overtime required to meet vital service demands of the department shall be authorized.

No task or function shall be performed on overtime by personnel that could otherwise be performed during regular work hours. Supervisors shall establish and hold personnel responsible for a level of performance during standard work hours that minimizes the need for overtime and/or the need for additional personnel.

### **9.3.3. Law Enforcement.**

Law Enforcement is exempt from payment of overtime pursuant to the Fair Labor Standards Act, 29 U.S.C.A. Section 213(b)(20), until such time as the Marshal's Office has five (5) or more officers, at which time it shall pay overtime pursuant to the Fair Labor Standards Act 207 (k) Rule. Officers shall be paid for all hours worked.

Deputies must receive the permission of the Marshal before working more than eighty-eight (88) hours per fifteen (15) day pay period. The Marshal must receive permission from the Mayor before a deputy or deputies work more than one hundred fifty (150) hours in a fifteen (15) day pay period.

### **9.4 Consistency with Fair Labor Standards Act.**

The provisions of Section 9.3 and 9.8 are subject to change or revision by the Fair Labor Standards Act and any federal regulation or revision thereof.

### **9.5 P.E.R.A. Benefits.**

All Village employees, with the exception of those employees who are subject to exclusion under P.E.R.A. rules, are required to join the Public Employees Retirement Association of New Mexico (P.E.R.A.).

### **9.6 Insurance Benefits.**

The Village offers group insurance benefits to all employees as long as the employee is scheduled to work at least 30 hours per week and whose term of employment when hired is for six or more months, unless the Affordable Healthcare Act or other legislation requires otherwise. Independent contractors are not eligible under the benefit plan. Insurance plans may be changed at the discretion of the Governing body or the insurance carrier.

### **9.7 Fringe Benefits.**

The Village will follow the Internal Revenue Service's rules with regard to fringe benefits. Taxable fringe benefits will be included on the employee's W-2 form. (Examples of fringe benefits are: uniforms, uniform allowances, vehicle usage, village cell phones, etc.) If an employee has a question regarding what constitutes a fringe benefit and how that may affect

him/her, the employee should contact the Clerk. Vehicles assigned as take-home vehicles must be properly identified with a logo as Village vehicles.

### **9.8 Compensatory Time.**

The use of Compensatory Time is discouraged and may only be awarded in accordance with the Village's Compensatory Time policy.

- A. Compensatory time in lieu of cash compensation may be given only if there is a current written agreement entered into voluntarily between the employee, department head, and the Mayor *before* the overtime is worked.
- B. The employee must have entered into this agreement before compensatory overtime work is performed.
- C. Compensatory time off for FLSA non-exempt employees shall be at a rate equal to one and one-half (1.5) hours for each hour of employment for which overtime compensation is required. However, if the additional hours worked would not qualify as overtime (i.e. leave was taken during the work week), but the employee takes time off in lieu of payment such compensatory time would be accrued at the straight time rate.
- D. If compensatory time is authorized under this policy, it is the responsibility of that employee's department head to make every reasonable effort to schedule that employee time off during the same pay period, so the employee does not work over a forty (40) hour work week so that compensatory time will accrue as straight time pursuant to section 5 above.
- E. The FLSA-covered employee who has accrued compensatory time off, and who has requested the use of compensatory time, shall be permitted to use the time within a reasonable period after making the request, if the use of compensatory time does not unduly disrupt the operations of the Village as determined by the employee's supervisor. Further, the Village may require use of the time so as to forestall accrual of large amounts of compensatory time.
- F. After accrual of 240 hours of compensatory time, or 160 hours of actual overtime worked, overtime worked must be paid. If compensation is paid to an employee for accrued compensatory time, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such a payment.
- G. A department head shall make every reasonable effort to schedule time off, for an employee to use accrued compensatory time, before June 30 of each year. Any accrued compensatory time off not used by an employee by June 30 shall be paid, to the employee two (2) weeks from the date the Village's next fiscal year budget is approved by the New Mexico Department of Finance Administration, at the regular rate earned by the employee at the time the employee receives such a payment.

## **SECTION X: LEAVE AND HOLIDAYS**

### **10.1 Holidays**

- A. The holidays observed by the Village are as follows, unless otherwise changed or adjusted by Resolution:

New Year's Day  
Martin Luther King Day  
President's Day  
Independence Day  
Memorial Day  
Labor Day  
Veteran's Day  
Thanksgiving  
Day after Thanksgiving  
Christmas Eve  
Christmas Day

- B. **Holiday Pay.** A paid holiday means up to eight (8) hours paid compensation for time off in recognition of each designated Holiday. Under no circumstances shall holiday pay exceed 8 hours. All employees, except temporary and casual employees, are eligible for holiday pay. Holiday pay is equal to an employee's basic hourly rate of pay.
- C. **Holiday Premium Pay.** FLSA non-exempt employees authorized and required to work on the day a holiday is observed, shall be compensated one and one half (1 ½) times their hourly rate of pay for all hours actually worked on the employee's first shift. Contract employees, chief deputies, unclassified employees, FLSA exempt employees and temporary and casual employees are not eligible for holiday premium pay.
- D. Employees taking authorized leave with pay during a holiday shall not be charged for leave time during that holiday. Employees scheduled to work on a holiday who call in sick will not be paid holiday pay and the time will be charged against their sick leave accrual. An employee who is on leave without pay or absent without leave shall not be paid for the holiday.

**10.2 Annual Leave with Pay (vacation).**

Annual leave may not be used before it is accrued and must be approved with at least seven (7) days or more notice by the employee’s supervisor prior to being taken. Full-time employees accrue annual leave with pay in accordance with the following schedule, based upon continuous length of Village service:

*Table 10.2*

Full Years of Service	Hours Accrued Per Pay Period	Annual Hours Accrued Per Year
Date of hire to the end of first year of employment	100 minutes	40
Year 2 through Year 10	4 hours	96
Year 11 through Year 15	6 hours	144
Year 16 through	8 hours	192

**10.3 Carry-Over of Annual Leave.**

It is the policy of the Village to encourage use of vacation time in the year it is accrued. The amount to be carried forward may not exceed twenty-four (24) days. Any unused vacation benefits in excess of the twenty-four (24) days as of the end of the fiscal period will be forfeited except in instances where the employee was prevented from taking vacation at the direction of supervisors or prior approval to forward the excess days is granted in writing by the governing body. It is the goal of Village administration to bring all employees within this Section as soon as practicable.

**10.4 Separation from Service or Change in Service Pay.**

Employees shall be paid for all accrued annual leave upon separation from Village service or as required by law. At the employee’s sole written option, and with Village approval, the sums may be paid over time in lieu of lump sum payment.

**10.5 Buy Back of Annual Leave.**

If an employee suffers a personal hardship, he or she may request of the Mayor, in writing, to be paid a maximum of fifty percent (50%) of their available leave at the rate of fifty percent (50%) of its value. The Mayor, upon reviewing the request, will make a recommendation to the governing body at its next session as to whether to grant the request.

**10.6 Request and Granting of Annual Leave.**

Taking of annual leave is subject to the approval of the supervisor. Request for leave must be submitted to the supervisor at least one (1) week in advance, except in cases of emergency. Every effort will be made to accommodate the employee’s request, but final approval will depend upon the Village’s needs being fully met.

### **10.7 Personal Leave Without Pay.**

For compelling personal reasons that do not trigger the Family Medical Leave Act, an employee may request and may be granted a personal leave of absence without pay, not to exceed ninety (90) consecutive calendar days, provided such absence does not conflict with Village operations. The request must be made in writing setting for the dates and reasons to the supervisor and the Mayor and governing body must approve such request. Approved leave under this policy will not result in loss of the employee's seniority or benefits, but employees who fail to return to work by the expiration of leave shall be considered to have voluntarily resigned their employment.

### **10.8 Personal Hours.**

Regular full-time employees will accrue personal hours at the rate of one (1) hour per month, as long as the employee has not been recently disciplined for absences or tardiness. The supervisor must approve taking of personal hours no later than one (1) day prior to taking off from work. Unused personal hours are forfeited annually, and no payment will be made in lieu of unused personal hours.

### **10.9 Sick Leave.**

Regular full-time, probationary, and unclassified employees shall accrue one half (1/2) day of sick leave every pay period, or twelve (12) days of sick leave per year. No more than forty (40) days of sick leave can be accrued. Sick leave is to be used when illness or prearranged medical appointment of an employee or immediate family member requires the employee to be away from work. Leave must be reported in writing as soon as anticipated to the supervisor. In all cases of absence due to illness beyond three (3) consecutive working days, a doctor's certificate must be submitted. Unused sick leave is forfeited upon termination and no payment will be made in lieu of the taking of sick leave.

### **10.10 Shared Leave Policy.**

Village employees are permitted to donate or receive annual or sick leave for other Village employees with severe or extraordinary illnesses, or to provide care for relatives or household members with severe or extraordinary illnesses. Time donated must not exceed half the accrued balance. Should an employee need to use donated hours, the Mayor must approve the request and a certificate of illness or injury will be required from a physician. Under no circumstances may the donee convert donated hours into cash.

### **10.11 Bereavement Leave.**

In the event of a death in the employee's immediate family, he or she will be entitled to bereavement leave. Up to three (3) days may be granted for an employee to attend the funeral of a member of his/her immediate family. These days will be charged against an employee's accrued sick leave. An additional two (2) days of sick leave may be authorized by the direct supervisor for extenuating circumstances.

## **10.12 Family Medical Leave**

- A. The Village provides family medical leave of absence without pay to eligible employees (those who have worked twelve (12) or more months and have worked at least 1,250 hours, not including paid time off such as sick or annual leave, in the year preceding the requested leave of absence) who wish to take time off from work duties to fulfill family obligations relating directly to the birth or adoption of a child or the illness of a child, spouse, domestic partner, parent or the employee themselves. Regular full-time and part-time employees are eligible to request family leave as described in these Rules.
- B. Eligible employees are allowed family/medical leave according to provisions of the Family Medical Leave Act (FMLA). As soon as an eligible employee becomes aware of the need for a family medical leave of absence, the employee shall request leave from their supervisor. Employees requesting family medical leave related to the illness of a child, spouse, domestic partner, parent or the employee themselves shall be required to provide a healthcare provider's certification of employee/family member's serious health condition. Eligible employees who do not request family medical leave in advance of a qualifying event will automatically be placed on family medical leave as soon as it is determined that their leave qualifies for protections under FMLA.
- C. The Village may require an employee to submit to a fitness for duty return to work exam when the need for FMLA leave is based on the employee's own serious health condition that may affect the essential functions of the employee's job. The Village must notify the employee of this requirement at the beginning of the leave.
- D. Eligible employees are allowed up to twelve (12) weeks of family medical leave or up to twenty-six (26) weeks of leave, in a single 12-month period, to care for a covered service member recovering from a serious injury or illness incurred in the line of duty on active duty. Eligibility for leave will be determined on a twelve (12) month rolling-back calendar. The employee will be required to take any available annual or sick leave as part of the approved period of leave.
- E. Subject to the terms, conditions and limitations of the applicable plans, the Village will continue to provide health insurance benefits for the full period of the approved family/medical leave, subject to all rules pertaining to leave without pay, Section 10.6.
- F. When family medical leave ends, every reasonable effort will be made to return the employee to the same position, if it is available, or to a similar available position for which the employee qualifies. The Village guarantees reinstatement to all eligible employees who are not key employees. If the employee fails to return to work or contact their supervisor on or before their expected date of return, the Village will assume that the employee has abandoned their job.
- G. According to FMLA, key employees are not guaranteed reinstatement; however, the governing body may authorize reinstatement as appropriate.
- H. Section 10.11 is meant to reflect the Family Medical Leave Act. If that Act conflicts with these provisions or is subsequently changed, Section 10.11 may reflect those changes without amendment to this Ordinance.

## **10.13 Administrative Leave.**

Administrative leave with pay may be granted by the Mayor pending an investigation or disciplinary action.



**10.14 Workers' Compensation Program. [§§52-5-1 et. seq., NMSA 1978]**

- A. The Village provides, pursuant to applicable law, a worker's compensation insurance program. This program covers any injury or anyone suffering from occupational diseases sustained in the course of employment as approved by the insurance carrier. Subject to applicable legal requirements, Workers' Compensation insurance provides benefits after a short waiting period, or if the employee is hospitalized immediately.
- B. Employees who sustain work-related injuries or occupational diseases must inform their supervisor immediately. No matter how minor an on-the-job injury may appear, it is important that it be reported immediately. This will enable an eligible employee to qualify for coverage as quickly as possible. A "First Report of Injury" shall be filed with the Clerk following the work-related injury. The report shall be signed by the employee and the employee's supervisor. In addition, the supervisor's "Accident Investigating Report" will be filed on the following work day. All accidents shall be reported, however minor.
- C. Neither the Village nor the insurance carrier will be liable for the payment of workers' compensation benefits for injuries that occur during an employee's voluntary participation in any off-duty recreational, social, athletic activity, or similar events off-duty.

**10.15 On-The-Job Injury Leave.**

An employee injured on the job may use accrued sick leave until exhausted, then annual leave until disability benefits commence, according to the provisions of the New Mexico Worker's Compensation Act. In the event an employee uses accrued leave, in lieu of workers' compensation, the leave used shall be re-credited to the employee upon the Village's receipt of reimbursement by the Worker's Compensation carrier.

**10.16 Voting Leave.**

For purposes of national, state or local election, an employee who is registered to vote will be granted up to two (2) hours paid leave for voting, between the time of opening and the time of closing of polls. The employee's supervisor may specify the hours for the leave. This leave will not be granted to any employee whose work day begins more than two (2) hours subsequent to the time of the opening of the polls or ends more than three (3) hours before the closing of the polls.

**10.17 Court Service Leave with Pay.**

Pay for jury duty shall be authorized only for those days that the employee is scheduled to work. If excused by the court during a working day, the employee shall return to work. Employees serving as jurors shall file for jury pay and turn in any pay received to the Village. Any jury duty worked beyond their regular work hours shall be refunded back to the employee.

**A. Procedures for Jury Duty Time:**

- 1. Juror Service Verification form from the Court must be attached to the Leave Request Form.

2. Reconciliation of time will include matching *Jury Hours Summary Sheet* received by the Court to time sheet, leave form and *Juror Service Verification form*.
- B. Court Appearance Time. When required by Village duties and subpoenaed to appear before a Court, personnel Hearing Officer, or governing body for the purpose of testifying in regard to Village matters, the employee will be compensated as regular work time.

#### **10.18 Life Threatening Illnesses in the Workplace.**

Employees with life-threatening illnesses, such as cancer, heart disease, and AIDS, often wish to continue their normal pursuits, including work, to the extent allowed by their condition. The Village supports these endeavors as long as employees are able to meet acceptable performance standards. As in the case of other disabilities, the Village will make reasonable accommodations in accordance with all legal requirements, to allow qualified employees with life-threatening illnesses to perform the essential functions of their jobs.

- A. Medical information on individual employees is treated confidentially. The Village will take reasonable precautions to protect such information from inappropriate disclosure. Management, as well as other employees, has a responsibility to respect and maintain the confidentiality of employee medical information. Anyone inappropriately disclosing such information is subject to corrective or disciplinary action up to and including dismissal of employment.
- B. The Health Insurance Portability and Accountability Act (HIPAA) and the Americans with Disabilities Act (ADA) require the Village to maintain the privacy of protected health information.

#### **10.19 Inclement Weather.**

The Mayor may close offices, authorize late reporting or early release due to inclement weather, and all employees will be compensated for normal work hours as administrative leave with pay and shown on a Leave Report Form. Inclement weather leave with pay will not exceed eight (8) hours in one work day.

#### **10.20 Leave for Unforeseen Circumstances.**

The Mayor may close individual offices, authorize late reporting or early release due to unforeseen conditions beyond the Village's control that prevent the employees from performing their duties as administrative leave with pay and shown on a Leave Report Form.

#### **10.21 Military Leave.**

- A. The Uniformed Services Employment and Reemployment Rights Act (USERRA) protects the job and benefits, for up to five years (or more in some cases), of a service member who must leave his or her civilian job because of military orders to report for training or active duty, voluntary or involuntary, in peacetime or wartime.
- B. Military Leave for Reserve or National Guard Activities (§ 20-1-1 NMSA 1978). USERRA requires service members, or a responsible representative of the military unit, to provide advance written or verbal notice to their employers for all military duty unless

giving notice is impossible, unreasonable, or precluded by military necessity. Paid Military leave is granted for authorized reserve or National Guard activities for a maximum of fifteen (15) working days with pay during a one (1) year period based on the federal government's fiscal year from October 1 to September 30. Military leave must be requested twenty (20) working days in advance, unless a national or state emergency exists, and an immediate call-up is initiated in which case notice as soon as possible is required. The employee must furnish proof of duty orders or other documentation prior to leave being granted unless the leave is for emergency purposes.

- C. **Extended Unpaid Military Leave.** Employees voluntarily or involuntarily serving on active duty for more than fifteen (15) working days may use accrued annual leave. When military leave has been exhausted, employees have the option of being placed on leave without pay (LWOP) or using accrued leave. Employees may use all of their annual leave on consecutive days or use up to twenty-seven (27) hours per pay period in order to maintain their group insurance benefits. Employees who exhaust their annual leave shall then be placed on LWOP for the remainder of time they are on active duty. Employees shall not receive pay or accrue leave while on LWOP. Employees wanting to maintain insurance benefits while on military duty will be required to pay the employee's share of their premium.
- D. **Service members are entitled to return to their job and receive pay raises, promotions, pension credit and other seniority benefits as if they had been continually employed, provided certain eligibility criteria are met. Protection under the USERRA applies if:**
  - 1. The job the employee left was for more than a brief, non-recurrent period, with no reasonable expectation that such employment would continue indefinitely or for a significant period.
  - 2. The employee left this job for the purpose of entering active duty.
  - 3. The employee is discharged under honorable conditions.

AND

- 4. The employee applied for reemployment within the applicable time limit.
- E. If these criteria are met, the USERRA provides the following protections:
- 1. The employee is entitled to return to the prior position with the same seniority, benefits, pay, and, additionally, any promotion or raise which could have been reasonably expected if the employee had remained continuously on the civilian job.
  - 2. The Village is required to offer disabled veterans the "nearest approximation" of the job the service member could have reasonably expected with continuous employment.
  - 3. Service members are protected from being discharged for the protected time period allotted by USERRA according to the time served on active duty, unless the Village proves misconduct or violation of policies.
  - 4. To be re-employed in the same position, the employee's return to work must occur within the following guidelines:
    - i. For a service period of 1-30 days, the employee must report to work immediately by the first regularly scheduled work day;

- ii. For a service period of 31-180 days, the employee must make application for re-employment within 14 calendar days after he/she is relieved from training or duty;
- iii. For a service period of 181 days or more, the employee must make application for re-employment ninety (90) calendar days after he/she is relieved from training or duty;
- iv. An employee who is released from hospitalization of a service-related injury, continuing after discharge for a period of not more than one (1) year, must make application for re-employment ninety (90) calendar days after he/she is relieved from training or duty.

F. Employees may qualify for up to twelve (12) weeks of leave for certain qualifying exigencies arising out of a covered military member's active duty status, or notification of an impending call or order to active duty status, in support of a contingency operation under the FMLA.

#### **10.22 Parent/Teacher Conferences.**

Employees may take leave to attend regularly scheduled (non-disciplinary) Parent/Teacher Conferences.

# **SECTION XI: SUBSTANCE ABUSE POLICY**

## **11.1 Purpose**

- A. The governing body has adopted this employee substance abuse policy and a drug and alcohol testing policy for Village employees. A safety-sensitive or security-sensitive employee is an employee who performs duties for the Village that have safety ramifications for themselves, fellow employees and the general public. These positions may include but are not limited to employees who operate equipment/have access to confidential information and/or receive calls for public service.
- B. The purpose of this policy is to assure worker fitness for duty and to protect our employees and the public from the risks posed by the misuse of alcohol, the use of prohibited drugs and the misuse of legal drugs. The Village is concerned only with those situations where use of alcohol and other drugs seriously interferes with any employee's health or job performance and adversely affects the job performance of other employees or is considered to be so serious as to be detrimental to the Village's operations and the safety of himself/herself and others. There is no intent to intrude upon the private lives of employees.

## **11.2 Policy.**

The Village is dedicated to providing safe, dependable and economical services to our public. Village employees are our most valuable resource and it is our goal to provide a healthy, satisfying working environment, which promotes personal opportunities for growth. In meeting these goals, it is our policy to (1) assure that employees are not impaired in their ability to perform assigned duties in a safe, productive, and healthy manner; (2) create a workplace environment free from the adverse effects of drug abuse and alcohol misuse; (3) prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances; and (4) to encourage employees to seek professional assistance at any time when personal problems, including alcohol or drug dependency, adversely affect their ability to perform their assigned duties.

## **11.3 Safety-Sensitive Employees.**

This policy applies to all safety-sensitive positions within the Village. All safety-sensitive employees for the Village are covered by this policy. Adherence to this testing policy is a condition of employment for all safety-sensitive positions. Safety-sensitive functions refer to any functions contained within an employee's realm of responsibilities that have an impact upon the safety and general welfare of the public. It has been determined by the Village that there are positions within the Village which are of a safety-sensitive nature, and as such, create the need for compliance with this policy.

## **11.4 Proper Application of the Policy.**

The Village is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, department directors are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any department director who knowingly disregards the

requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, will be subject to disciplinary action, up to and including termination.

### **11.5 Prohibited Substances.**

“Prohibited substances” addressed by this policy include the following:

- A. **Illegally used controlled substances or drugs.** Includes, but is not limited to: marijuana, amphetamines, methamphetamines, opiates, phencyclidine (PCP), and cocaine, as well as drugs not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. The collection agency shall adhere to all requirements outlined in 49 CFR, Part 40 DOT Guidelines in determining what constitutes a positive test.
- B. **Legal Drugs.** The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected shall be reported by the employee to supervisory personnel and medical advice shall be sought by both the employee and supervisor, as appropriate, before performing safety-sensitive functions. A legally prescribed drug means that an individual has a prescription or other written approval from a physician for the use of a drug in the course of medical treatment. It must include the patient’s name, the name of the substance, quantity/amount to be taken, frequency and the period of authorization. The misuse or abuse of legal drugs while performing official business is prohibited.
- C. **Alcohol.** The use of beverages or medications containing alcohol, subject to Paragraph 11.3(B) above.

### **11.6 Prohibited Conduct**

- A. **Manufacture, Trafficking, Possession, and Use.** Employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or sale of prohibited substances while on duty on Village premises, or in Village vehicles. Law enforcement shall be notified, as appropriate, where criminal activity is suspected.
- B. **Intoxication/Under the Influence.** Any safety-sensitive employee who fails a drug test or has a breath alcohol concentration of 0.04 or greater shall be removed from their safety-sensitive position and referred to an SAP (substance abuse professional). A safety-sensitive employee is subject to termination upon the failure of a drug or alcohol test as described above. A safety-sensitive employee with a breath alcohol concentration of 0.02 or greater, but less than 0.04 shall be immediately removed from their safety-sensitive position for a minimum of 8 hours or until they can pass an alcohol test with a BAC of less than 0.02. If a breath analyzer is unavailable, testing will be conducted via blood test.
- C. **Alcohol Use.** No employee should report for duty or remain on duty when his/her ability to perform assigned safety-sensitive functions is adversely affected by alcohol or when his/her breath alcohol concentration is 0.04 or greater. No safety-sensitive employee shall use alcohol while on duty, or while performing a safety-sensitive function. No employee shall use alcohol within four hours of reporting for duty; or during the hours that they are scheduled on call; or up to eight hours following an accident or until tested;

or anytime during a period when that employee may have to perform safety-sensitive functions. Employees, who are not scheduled on call, shall upon being notified to report to duty, acknowledge alcohol use and their inability to perform his/her safety-sensitive function and shall be excused from doing so without further consequences. No Village employee under the age of 21 shall have a breath alcohol concentration of .02 or greater at any time while performing duties for the Village. Violation of these provisions is prohibited and punishable by termination.

- D. **Compliance with Testing Requirements.** All safety-sensitive employees shall be subject to urine drug testing and breath alcohol testing. Refusal to comply with a request for testing, inability to provide sufficient quantities of breath or urine to be tested without a valid medical explanation, tampering with or attempting to adulterate the specimen or collection procedure or not reporting to the collection site in the time allotted, shall constitute a verified positive test result.

### **11.7 Random Testing—Safety Sensitive.**

- A. Employees in safety-sensitive positions shall be subjected to random, unannounced drug testing, in addition to testing for other reasons provided in this Policy. The selection of safety-sensitive employees for random drug testing will be made using a scientifically valid method that ensures each covered employee that they will have an equal chance of being selected each time selections are made. The random tests will be unannounced and spread throughout the year on all days and during all hours of operation.
- B. When a safety-sensitive employee is informed of a random drug test they must be tested as soon as is practicably possible but, in a time, not to exceed three (3) hours. All employees who have been randomly selected or are testing in conjunction with Rule 11.11 will be notified, in writing, by the Mayor, Clerk, or department director. All tests will be collected as a split sample giving the employee the opportunity to exercise his/her right to an additional test (Section 11.10) on the sample that was collected.
- C. All safety-sensitive employees shall be placed in a selection pool and random drug testing shall come from this predetermined pool.
- D. Shift employees, or employees who are not at work on the day of the scheduled test (random or otherwise), and who have been selected for testing, will be required to test immediately upon their return to work/duty and will be notified and expected to adhere to the rules as described above.

### **11.8 Pre-Employment Drug & Alcohol Screening.**

All applicants for employment with the Village shall be required to take a drug and alcohol screening test when directed by the Clerk or his/her designee. Any applicant for employment with the Village whose pre-employment drug and alcohol screen test is identified as positive shall not be eligible for employment and is precluded from re-application for a period of one (1) year from the date of the test. Any applicant whose pre-employment test is identified as dilute shall not be eligible for employment and is precluded from re-application for a period of six (6) months.

### **11.9 Reasonable Suspicion Testing.**

All employees shall be subject to urine and/or breath testing when there is reasonable suspicion to believe the employee is under the influence of prohibited substances. A reasonable suspicion referral for testing will be made on the basis of articulable objective facts and circumstances that are consistent with the short-term effects of substance abuse. Examples of reasonable suspicion include, but are not limited to the following:

- A. Physical signs, symptoms, and odors consistent with prohibited substance use.
- B. Evidence of the manufacture, distribution, dispensing, possession, or use of controlled substances, drugs, alcohol, or other prohibited substances.
- C. Occurrence of an accident that may have been caused by use of a prohibited substance or alcohol misuse.
- D. Fights (to mean physical contact), assaults, and flagrant disregard or violations of established safety, security, or other operating procedures.

### **11.10 Post-Accident Testing.**

Any Village employee involved in an accident occurring on Village property or involving Village equipment/vehicle may be subject to a drug or alcohol test at the request of the immediate supervisor and with approval of the Mayor.

### **11.11 Return-To-Duty Testing.**

A return-to-duty test is required of an employee who has had a positive drug or alcohol test and must be passed (negative non-dilute) before they can return to their position. The SAP must first clear the employee to return-to-regular-duty after the evaluation and insure the employee has consented to treatment. The return-to-duty test may be for drugs and/or alcohol as required. Any work missed due to a positive drug/alcohol test or due to treatment shall be charged to the employee's sick leave and/or annual leave (employee's choice) or leave without pay if the employee has no leave balances.

### **11.12 Follow-Up Testing.**

Once allowed to return to duty, safety-sensitive employees shall be subject to unannounced follow-up testing for at least twelve (12) but not to exceed sixty (60) months. The frequency and duration of the follow-up testing may be recommended by the SAP as long as not more than six tests are performed during the first 12 months after the employee returns to duty. Follow-up testing is separate from and in addition to the random testing program.

### **11.13 Testing Which Results in a Dilute Specimen**

#### **A. Definitions:**

**Dilute Drug Screen** – Is a drug screen which is identified by the testing lab as an irregular specimen pertaining to the specimen's specific gravity and creatinine concentration. (The irregularity in specific gravity minimizes the reliability of the testing procedure and thereby reduces the reliability in the results.)



**Primary Test** – A test which is conducted under Sections 11.10, 11.11 or 11.12.

**Monitored Tests** – The Village will offer all employees who are required to take a second level test the opportunity to have the test monitored by a supervisor.

**B. Dilute Drug Screen Procedure:**

A dilute drug screen for safety-sensitive Village employees who are covered by this policy will be handled as follows:

**1. Primary Test:**

Identified as Dilute – The employee shall enter into a re-entry contract as defined in 11.18.

**2. Second Level Test (test for re-entry purposes or follow-up tests defined within a re-entry contract):**

- a. **Monitored Dilute** – The Village will accept the test results as provided by the lab (a test will be monitored only at the request of the employee)
- b. **Unmonitored Dilute** – Shall result in termination as stated in the re-entry contract.

**11.14 Employee Requested Testing.**

Any employee who questions the result of a required drug test under this policy may request that an additional test be conducted. This test will be conducted at a different certified laboratory. The test will be conducted on the split sample that was provided by the employee at the same time as the original sample. The method of collecting, storing, and testing the split sample will be consistent with acceptable testing standards. The employee's request for a split sample test must be made to the Clerk within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted if the delay was due to documentable facts that were beyond the control of the employee. An employee requested test will be at the expense of the employee.

**11.15 Discipline for Positive Drug/Alcohol Test.**

- A. Any probationary employee who, as a result of policy tests positive for drugs and/or alcohol, may be terminated immediately.
- B. Any employee who has been placed on time for improvement and who tests positive for drugs/alcohol as defined by policy may be terminated from employment.
- C. Marshal's Office (includes law enforcement officers, dispatchers, and administrative personnel).
  - 1. A positive prohibited substance/alcohol test for an officer or dispatcher shall be reported to the New Mexico Law Enforcement Academy Director as outlined in the NMLEA Handbook Subsection B4 of 10.29.1.11 NMAC.

2. Any certified or uncertified law enforcement officer or dispatcher who tests positive for prohibited substances and/or alcohol under policy may be terminated from employment with the Village.
  3. Any certified or uncertified law enforcement officer or dispatcher whose primary test is determined to be a dilute test will be subject to the terms and conditions as defined below (this does not include tests taken as a result of a re-entry contract which are monitored tests and are determined to be dilute):
- D. Public Works Department covered employees (any employee who operates machinery, heavy equipment or has a CDL)
1. Any Public Works Department covered employee who tests positive for prohibited substances and/or alcohol under policy may be terminated from employment with the Village.
  2. Any Public Works Department covered employee whose primary test is determined to be a dilute test will be subject to the terms and conditions as defined below (this does not include tests taken as a result of a re-entry contract which are monitored tests and are determined to be dilute).

### **11.16 Re-Entry Contracts**

Employees who are not immediately terminated but re-enter the workforce must agree to a re-entry contract. That contract may include, but is not limited to:

1. A release to work statement from an SAP.
2. A negative test for drugs and/or alcohol. (Section 11.14)
3. An agreement to unannounced frequent follow-up testing for a period of one to five years with up to six tests performed the first year (Section 11.15).
4. A statement of expected work-related behaviors.
5. An agreement to follow specified after care requirements with the understanding that violation of the re-entry contract is grounds for termination.
6. The cost of any treatment or rehabilitation services will be paid for directly by the employee or their insurance provider. Employees will be allowed to take accumulated sick leave and vacation leave to participate in the prescribed rehabilitation program.
7. Village safety-sensitive employees shall be terminated upon violation of any of the terms and conditions of the individual's re-entry contract (defined below). An unmonitored dilute, second level test for Marshal's Department and Public Works Department employees shall result in termination of employment.

### **11.17 Detection.**

The Village reserves the right to inspect, at any time, all Village property and all Village vehicles and equipment for the presence of prohibited substances or alcohol. All inspections will be scheduled as deemed necessary by the Clerk or his/her designee and conducted by the Marshal's Department.

### **11.18 Voluntary Request for Assistance.**

- A. The Village intends to give the same consideration to persons who voluntarily request assistance (prior to being randomly selected or selected for cause) with chemical dependencies as it does to employees having other diseases.
- B. Early recognition and treatment of chemical (drug and alcohol) dependency problems is important for successful rehabilitation and reduced personal, family and social disruption. The Village supports sound treatment efforts and an employee's job will not be jeopardized for conscientiously seeking assistance prior to random selection or selection for cause. Normal benefits, such as sick leave and the group medical plan, are available to give help in the rehabilitation process to any employee who voluntarily requests assistance for chemical dependencies.

### **11.19 Records**

- A. All records of the controlled substance abuse prevention program must be kept in a secure location with controlled access in the Clerk's Office. Regulation requires that certain records according to their importance be maintained for varying lengths of time, from one (1) to five (5) years.
- B. The following are entitled access to these records through approval of the governing body:
  - 1. CDL Issuer or his/her representative;
  - 2. Federal Highway Administration;
  - 3. The Secretary of Transportation;
  - 4. Any Department of Transportation Agency;
  - 5. Any State or Local Official with regulatory authority over the employee;
  - 6. Any prospective employer with the employee's written permission.

### **11.20 Confidentiality.**

No laboratory reports or test results shall appear in the employment personnel file unless they are a part of a disciplinary action, but shall be placed in a special locked file.

## **SECTION XII: TELEPHONE and INTERNET USE**

### **12.1 Telephones**

#### **12.1.1 Policy.**

The Village understands and appreciates that employees utilize Village-issued land lines and cellular phones for business purposes. Such use is part of the daily operation of the Village; however, phone use for personal business can be a serious distraction in the workplace and have an impact on employee productivity. The intent of this policy is to describe the Village's phone policy, for both personal and Village-issued phones, and recognize the allowable and reasonable limits for personal use.

#### **12.1.2 Village-Issued Phones.**

Village issued phones will be used for business purposes only. The Village recognizes that some limited, infrequent personal use is necessary and is allowed for reasons such as family emergencies, scheduling of child care, or care giving matters with other family members. In any such case, the employee shall make his/her phone communication as short as possible under those circumstances. The Clerk will periodically review Village phone bills and assess personal use of such phones for reasonableness.

#### **12.1.3 Personal Cell Phones.**

Employees are authorized to make reasonable, but limited use of cell phones for necessary personal calls or electronic messaging during working hours that meet the following criteria:

- i. the call or electronic message does not adversely affect the performance of the employee or co-workers, the Village's service to the members of the public, or the safety of the employee or others;
- ii. the call or email is direct and to the point;
- iii. the number of calls and emails are limited;
- iv. the call or email reasonable could not have been made during the employee's break or lunch times. Examples of such calls or emails are: to home or doctor if employee is injured or becomes sick at work; to notify an employee's family or other appropriate parties of a schedule change caused by official business or transportation schedule changes or delays; to briefly communicate with dependents or those responsible for their care; medical needs for dependents.

#### **12.1.4 All Phones.**

No employee will use any cell phone for any purpose while driving a Village vehicle.

#### **12.1.5 Compliance with Employment Policies.**

All phone usage must comply with applicable policies. Phones may not be used to harass co-workers, or third parties and communications must not be generally inappropriate.

## **12.2 Internet Usage.**

Internet use on Village equipment is authorized only to conduct Village business. Internet use brings the possibility of breaches to the security of Village information. It also creates the possibility of contamination to the system via viruses or spyware. The removal of such programs requires expensive procedures. For these reasons, and to assure the use of work time appropriately, employees must limit Internet use.

### **12.2.1 Email Generally.**

Email is to be used for official business only. Confidential information must not be shared outside of the office, without authorization, at any time. Employees are not to conduct personal business using the office computer or email, or forward non-business emails to associates, family, or friends; even during breaks, at lunch, or after hours. Viewing pornography or sending pornographic jokes or stories via email is considered sexual harassment and will be addressed according to our sexual harassment policy.

### **12.2.2 Emails that Discriminate.**

Emails that discriminate against employees by virtue of any protected classification including race, gender, nationality, religion, and so forth will be dealt with according to the harassment policy. These emails are prohibited at the office. Sending or forwarding such non-business emails will result in disciplinary action that may lead to employment termination.

### **12.2.3 Ownership of Email.**

The Village owns any communication sent via email or that is stored on office equipment. Authorized staff have the right to access any material in your email or on your computer at any time. Please do not consider your electronic communication, storage, or access to be private if it is created or stored at work.

### **12.2.4 Passcodes on Village Owned Electronic Devices.**

Passwords or passcodes on Village owned electronic devices are the property of the Village. The Village will either issue and manage passcodes, or the employee will provide to the Village their current passcode(s).

## **SECTION XIII: EQUAL EMPLOYMENT OPPORTUNITY/ AFFIRMATIVE ACTION PLAN**

### **13.1 Purpose.**

The purpose of this section is to recruit, employ and promote the most qualified applicants or employees to work in Village employment. Employment and promotional opportunities shall be based solely upon ability and demonstrated competence, not upon extraneous factors. Age, sex, marital status, national origin, religion, race, sexual preference, political affiliation and handicaps not related to ability to perform the job sought, are declared extraneous factors that shall have no bearing on employment or promotional opportunities within Village service.

### **13.2 Statement of Policy.**

It is the policy of the Village to comply with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, amended by the Equal Employment Opportunity Act of 1972 and Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990, in all employment and programs administered by the Village. The Village affirms that individuals will be considered for employment or promotion on the basis of bona-fide occupational qualification only. Each employee or prospective employee will be advised of this policy. All announcements or notices regarding position openings or opportunities will contain the words "An Equal Opportunity Employer".

### **13.3 Management Responsibility.**

The Clerk will counsel department directors as they investigate and resolve internal complaints of employment discrimination filed by Village employees or employment applicants. The Clerk shall be the referral officer for the Village to receive notice of alleged unlawful employment practices from the Equal Employment Opportunity Commission (EEOC) as provided for in Public Law 88-352, Title VII, Section 706(C); 78 Stat. 241 (42 USC 2000e-5).

### **13.4 Complaint Procedures.**

Any employee or person refused employment or who believes he/she has been subjected to a discriminatory employment act or practice prohibited by federal or state law shall file with the Clerk a written and signed statement of facts setting out the basis of the complaint.

- A. Upon receiving a written and signed complaint or upon receiving notice of an alleged unlawful employment practice from an individual, the Clerk shall immediately conduct an investigation and attempt to resolve such complaint informally and forward copies of the investigation and results to the department director and Mayor.
- B. If the complaint is not resolved informally by the process set forth in subsection A above, it will go before a Hearing Officer appointed by the governing body. The Hearing Officer shall conduct a hearing not more than forty-five (45) days after the complaint has been received by the Clerk. The complainant, complainant's attorney (if any), the Mayor, Clerk, Village Attorney, department director, and the employee allegedly responsible for

the discriminatory act or practice, shall be given five (5) days written notice of the hearing, together with a copy of the complaint filed with the Clerk.

- C. At the hearing, the complainant and respondent shall have the right to be represented by counsel; all testimony shall be received under oath, and the Hearing Officer shall have the authority to issue administrative subpoenas for the attendance of any Village employee as a witness.
- D. The Hearing Officer shall report findings and recommendations in writing to the Clerk and Mayor not more than twenty (20) days after hearing the complaint. A full record of the proceedings shall be kept either by audio media or in writing by the Clerk in a confidential file.

### **13.5 Remedies.**

In the event the Hearing Officer determines that a discriminatory act or practice has occurred, the Mayor, with the approval of the governing body, may take appropriate action including, but not limited to, reinstatement, hiring or promotion of the aggrieved individual, with or without back pay, or any other equitable administrative relief necessary to correct and rectify the discriminatory act or practice. Nothing in this policy prohibits any aggrieved party from seeking remedy through the state or federal agency responsible for such actions.

## **SECTION XIV - MISCELLANEOUS**

### **14.1 Designated Work Areas.**

All employees are to be at their designated work areas on time and ready to work. They shall work until the scheduled quitting time, unless permission of the supervisor has been obtained for different work hours. Employees shall not litter work areas and will keep such areas neat and clean.

### **14.2 Personal Business.**

Personal business, other than that of a very limited nature, shall not be conducted during work hours.

### **14.3 Safety.**

The Village is committed to having all work conducted in a safe manner. All safety precautions shall be followed in accordance with federal, state, or Village policies. Employees are required to use PPE as required.

### **14.4 Assignment of Property and Equipment.**

Forms promulgated by the Clerk and approved by the governing body will be used to assign or check out Village property to employees, i.e. cell phones, keys, etc. The employee, by signing the form, will agree to care for the property and to replace or repair it should it become damaged or lost. Further, the employee will reimburse the Village for the consequential damages that result from the damage or loss; for example, if keys are lost, locks must be replaced, and new keys issued to other employees. The form will be placed in the employee's personnel file.

### **14.4 Use of Village Property.**

Employees shall not misuse or destroy Village property, records, or other material in their care, control, or custody; nor shall any Village property, records, or other material be removed from the premises of the Village offices unless written permission by the supervisor has been given. Employees shall not use Village property, records or equipment for personal use.

### **14.5 Village Vehicles.**

The Village of Magdalena Vehicle Accident Prevention Policy Program as adopted by the Governing body of Trustees governs vehicle use and safety.

### **14.6 Personal Appearance.**

Dress, grooming, and personal cleanliness standards contribute to the morale of all employees and affect the business image the Village employee presents to customers and visitors.



- A. During business hours, employees are expected to present a clean and neat appearance and to dress according to the requirements of their positions. Employees who meet the public, both internal and external, must dress in appropriate business attire at all times. Examples of questionable work attire are sun dresses with bare backs and/or shoulders, men's undershirts, excessively baggy, short, or tight clothing, sweatpants and shorts, for men or women, bare midriffs or excessively sheer fabrics unless adequate cover-up (jacket, sweater, etc.) is worn throughout the work day. Employees who appear for work inappropriately dressed will be sent home and directed to return to work in proper attire. Under such circumstances, employees will not be compensated for the time away from work.
- B. Employees are required to maintain personal cleanliness.
- C. An employee should consult their supervisor if they have questions as to what constitutes appropriate attire.
- D. An employee in a designated job with the Village may be required to wear uniform clothing to perform the job function with patches, badges or other distinctive items as approved by the supervisor. The Village will supply uniforms upon initial employment and will replace on an as needed basis. In the case of work boots, each employee will receive \$200.00 per year toward purchase of a new pair.

#### **14.7 Searches.**

The Village's employees should not expect privacy in their personal effects while on Village property or on Village time. The Village may search lockers, desks, toolboxes, lunch sacks, clothing, Village internet, Village e-mail, computer accounts, electronic media/storage, Village vehicles, and any other items in which an unauthorized weapon or other contraband may be hidden. The Marshal or Deputy Marshal should witness or effect such searches. To the extent that an employee refuses to permit a search, such refusal may constitute grounds for disciplinary action.

#### **14.8 Workplace Violence.**

The Village provides a safe work place for all employees. All employees, including supervisors, are responsible for using safe work practices, for following all directives, policies and procedures, and for assisting in maintaining a safe and secure work environment.

**Prohibited Conduct.** The Village does not tolerate any type of workplace violence committed by or against employees or the public. Employees are prohibited from making threats or engaging in violent activities. This list of behaviors, while not inclusive, provides examples of conduct that is prohibited. Engaging in any of these behaviors is grounds for discipline, up to and including termination.

1. Causing physical injury to another person;
2. Making threatening remarks;
3. Aggressive or hostile behavior that creates a reasonable fear of injury to another person or subjects another individual to emotional distress;
4. Intentionally damaging Village property or property of another employee;
5. Possession of a weapon while on Village property or while on Village business, with the exception of the Marshal and Deputies;

6. Committing acts motivated by, or related to, sexual harassment, harassment or domestic violence.

#### **14.9 Final Paycheck.**

An employee who resigns shall receive a final paycheck on the first regularly scheduled payday following the employee's effective date of resignation. In the case of death, final salary and compensation for unused annual leave shall be paid to the employee's named beneficiary or, if unnamed, to the employee's estate, on the next regularly scheduled payday.

#### **14.10 Return of Uniforms, Equipment & Village Property.**

Upon severance from Village service, all Village property shall be returned to the Village. Failure to do so shall result in a deduction for cost of replacement of the items from the employee's final paycheck and possible legal action to recover return of security-sensitive items.

#### **14.11 Normal Work Hours.**

Normal work hours will be based on a forty (40) hour work week. All Village offices shall be open from 8:00 a.m. to 5:00 p.m. Monday through Friday; unless a different forty (40) hour work schedule is approved by the department director and the Mayor. During a normal work day, the department director may authorize unpaid full one-hour lunch breaks in accordance with departmental scheduling needs.

#### **14.12 Reduced Work Hours.**

The governing body may reduce the number of work hours by resolution if it determines that the Village budget will not sustain the normal work hours. Reduced work hours will apply to all full-time employees, with the possible exception of those employees in safety-sensitive or security-sensitive positions.

#### **14.13 Contents of Personnel File.**

Subsequent to hiring, a separate record file shall be prepared and maintained for each employee. These records shall be kept in the Clerk's office. It is the responsibility of each supervisor to ensure that the records of the employees are complete and up-to-date. The file shall contain a minimum of the following records:

- A. the original application form;
- B. the originating personnel action showing occupation, position classification, date of beginning employment and salary and a signed receipt, evidence of receiving these Rules;
- C. copies of personnel action forms.
- D. copies of all performance evaluations, if applicable;
- E. copies of all favorable or unfavorable letters or memorandums such as letters or certificates of appreciation or records of other outstanding achievements regardless of origination, so long as the procedure applicable to written reprimands is followed;
- F. records or certificates of educational training or orientation achievement completion;

- G. records of disciplinary actions such as reprimands, suspensions, demotions or dismissal;  
and
- H. application for retirement program.
- I. Property/key check out form.

#### **14.14 Access to Personnel Files.**

Personnel files are the property of the Village and access to the information they contain is restricted. Generally, only management personnel of the Village who have a legitimate reason to review information in a file are allowed to do so. Employees who wish to review their own file should contact the Clerk's office. With reasonable advance notice, employees may review their own personnel files in the Clerk's office and in the presence of the Clerk.

## **SECTION XV: AUTHORITY**

### **15.1 Rules.**

These rules are promulgated on the authority granted in state and federal law and the Ordinance providing for these Rules.

### **15.2 Savings Clause.**

If any article, section, paragraph, clause, word or phrase of this Ordinance is held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance.

## **SECTION XVII: REPEAL OF FORMER PERSONNEL POLICY**

Village of Magdalena Personnel Ordinance(s), including 2016-03 are hereby repealed, as well as all other Ordinances or Resolutions relating to personnel that are in conflict with the above provisions, by the adoption of this Ordinance.

**Passed, Approved, and Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2018.**

Approved:

\_\_\_\_\_  
Richard Rumpf, Mayor

\_\_\_\_\_  
Katherine Stout, General Counsel as to  
legal sufficiency

Attested:

\_\_\_\_\_  
Stephanie Finch  
Village Clerk

# **EMPLOYEE ACKNOWLEDGEMENT FORM**

**VILLAGE OF MAGDALENA EMPLOYEE RECEIPT OF PERSONNEL POLICY  
ORDINANCE 2018-04.**

I \_\_\_\_\_ acknowledge that on \_\_\_\_\_  
(print name of employee) (date)

I received an electronic/hard copy of the Village of Magdalena Personnel Policy Ordinance 2016-03. I understand that the Personnel Policy is the law that controls, explains and provides the terms of and conditions of my employment with the Village. I further understand that this receipt will be placed in my employment file as evidence of my having been given a copy the policy.

\_\_\_\_\_  
(Signature of Employee)

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
CHILDREN, YOUTH AND FAMILIES DEPARTMENT  
AND  
Magdalena Marshal's Office**

THIS MEMORANDUM OF UNDERSTANDING ("Memorandum") is made by and between The Children, Youth and Families Department ("CYFD") and Magdalena Marshal's Office ("MMO")

**RECITALS:**

**WHEREAS**, CYFD maintains the Family-Automated Client Tracking System (FACTS) Protective Service and Juvenile Justice Services Division databases, which contain case management information relating to active and historical CYFD cases, clients and investigations;

**WHEREAS**, MMO has requested access to FACTS Protective Service and Juvenile Justice Services Division databases;

**WHEREAS**, MMO is authorized under the provisions of §§32A-2-32C(7) and 32A-4-33B(7) NMSA 1978 to be granted access to otherwise confidential CYFD records and information;

**WHEREAS**, MMO requests such information so that MMO law enforcement officers will have access to the FACTS Protective Service and Juvenile Justice Services Division databases for investigative purposes;

**WHEREAS**, the purpose of this Memorandum is to allow MMO access to the information contained in these databases in order to enhance officers' ability to respond, react and make operational decisions regarding law enforcement events and investigations;

**WHEREAS**, the confidentiality provisions codified in §§32A-2-32 and 32A-4-33 NMSA 1978 generally prohibit the disclosure of information subject to certain exceptions;

**NOW, THEREFORE, IT IS AGREED** as follows:

**I. TERM OF MEMORANDUM**

This Memorandum shall take effect upon signature by the authorized representatives of CYFD and MMO, and shall remain in effect until the sooner of July 1, 2019, or being terminated by CYFD or MMO, upon fourteen days written notice pursuant to Paragraph V herein.

## **II. DEFINITIONS AND ABBREVIATIONS**

"Disclose" or "disclosure" means the release of information, with or without the consent of the individuals or employing party to whom the information pertains. Disclosure includes all forms of electronic methods for the transmittal of information and may be in any media or by any means mutually agreeable to the parties.

## **III. REQUIRED TASKS UNDER THE MEMORANDUM**

### **a) Joint Responsibilities**

1. CYFD and shall comply with the provisions of this Memorandum in all respects. Nothing in this Memorandum may be construed to allow any signatory to this Memorandum to maintain, use, disclose or share protected information in a manner not allowed by state law or CYFD regulation.
2. CYFD and MMO shall identify at least one authorized representative from their respective agencies who shall be responsible for processing and responding to information requests from the other party.

### **b) Responsibilities of CYFD**

1. CYFD will provide access to MMO to the aforementioned CYFD databases. Use of the aforementioned CYFD databases is solely for investigative purposes. CYFD, in consultation with INITIALS OF YOUR DEPARTMENT, will provide procedures by which information from said database may be disseminated to officers investigating an incident.
2. CYFD will assist MMO in developing procedures and systems to ensure confidential information that is processed, stored, and/or transmitted under the provisions of this Memorandum will be maintained in a secure manner to prevent further disclosure of the information, including the interception, diversion, duplication, or other unauthorized access to said information.
3. CYFD will assist MMO in developing procedures and systems to ensure all information obtained pursuant to this Memorandum is kept in secured facilities and media and that access to such records is restricted to MMO personnel who are authorized to have access to said information to fulfill the purposes of this Memorandum.
4. CYFD agrees not to disclose any information generated or retrieved by MMO for the purpose of a MMO investigation in response to a public records request made under §14-2-1 *et. seq.* NMSA 1978 or pursuant to a request for disclosure in a criminal or civil proceeding without first consulting with regarding objections as



to confidentiality or privilege that MMO may have prior to releasing the public records.

**c) Responsibilities of Magdalena Marshal's Office**

1. MMO agrees not to share or re-disclose information received under this Memorandum with any other entity, organization or individual, except as permitted pursuant to §§32A-2-32 and 32A-4-33 NMSA 1978.
2. MMO agrees not to copy, reproduce or transmit information obtained pursuant to this Memorandum except as necessary to fulfill the purpose of this Memorandum or as permitted pursuant to §§32A-2-32 and 32A-4-33 NMSA 1978. Storage of all information must be by secure electronic systems and/or networks. All copies of information obtained pursuant to this Memorandum of any type including any modifications or additions to such information from any source, are subject to the provisions of this Memorandum in the same manner as the original information.
3. The ability to access or maintain information under this Memorandum shall not under any circumstances transfer from or be assigned to any other individual, institution, organization or entity.
4. MMO agrees that procedures and systems will be established to ensure that all confidential information processed, stored, and/or transmitted under the provisions of this Memorandum shall be maintained in a secure manner that prevents further disclosure of the information, including the interception, diversion, duplication, or other unauthorized access to said information.
5. MMO agrees to establish procedures and systems to ensure all information obtained pursuant to this Memorandum is kept in secured facilities and media and that access to such records is restricted to MMO personnel who are authorized to have access to said information to fulfill the purposes of this Memorandum.
6. MMO shall inform CYFD of incidents of breach of the security of any information received from CYFD pursuant to this Memorandum.
7. MMO agrees not to disclose any information obtained from CYFD pursuant to this Memorandum in response to a public records request made under §14-2-1 *et. seq.* NMSA 1978 without consulting with CYFD regarding objections as to confidentiality and privilege CYFD may have prior to releasing the public records.
8. MMO agrees that access to information will be restricted to authorized employees who require the information for investigative purposes in furtherance of their official duties.

**IV. SCOPE OF MEMORANDUM**

This Memorandum incorporates all the understandings between CYFD and MMO concerning the subject matter hereof. No prior Memorandum, verbal representations, or understandings shall be valid or enforceable unless embodied in this Memorandum.

**V. TERMINATION OF MEMORANDUM**

This Memorandum may be terminated by CYFD or MMO, upon written notice delivered to the other not less than fourteen (14) days prior to the intended termination date. By such termination notice, neither CYFD nor MMO, shall negate obligations already incurred or required to be performed prior to the effective date of termination.

CYFD or MMO, may suspend or terminate this memorandum upon learning of any violations of the terms of this MOU, or suspend this MOU until such time as it has been determined that the actions have been remedied or corrected. This Memorandum shall terminate automatically on July 1, 2019, unless extended by a written agreement.

**IV. LIABILITY**

Each party shall be solely liable for its own acts or failure to act in accordance with this MOU and will be solely responsible for the actions of its own officers, agents and employees within the strict limits of the New Mexico Tort Claims Act, NMSA 1978, 41-4-1 et seq.

**IN WITNESS WHEREOF**, the parties have caused this Memorandum to be executed on the year and date indicated, with the effective date being the most recent signature.

**CHILDREN YOUTH & FAMILIES DEPARTMENT**

\_\_\_\_\_  
Monique Jacobson  
Cabinet Secretary or Designee

\_\_\_\_\_  
Date

**Reviewed as to legal form and sufficiency  
New Mexico Children Youth & Families Department, Office of General Counsel**

\_\_\_\_\_  
Amanda Romero  
Chief General Counsel or Designee

\_\_\_\_\_  
Date

\_\_\_\_\_  
**Magdalena Marshal's Office**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Reviewed as to legal form and sufficiency  
Magdalena Marshal's Office,  
Office of Legal Affairs**

\_\_\_\_\_  
**Date**

**VILLAGE OF MAGDALENA  
ORDINANCE 2015-06**

**LODGERS' TAX**

**WHEREAS, NMSA 1978, Section 3-17-1(A)(C)(1) provides that municipalities may adopt ordinances not inconsistent with the laws of the State of New Mexico and may enforce obedience to those ordinances;**

**WHEREAS, NMSA 1978, Section 3-38-15 provides that municipalities may impose by ordinance an occupancy tax for revenues on lodging within the municipality;**

**WHEREAS, NMSA 1978, Section 3-38-20 provides that an ordinance imposing an occupancy tax shall comply with certain requirements and not be inconsistent with the Lodgers' Tax Act, NMSA 1978, Section 3-38-13 through 3-38-24;**

**WHEREAS, NMSA 1978 Section 3-38-1 provides that a governing body may declare, by ordinance, that the licensing or regulation of a business not otherwise exempt by law is conducive to the promotion of the health and general welfare of the municipality and may impose a license fee.**

**NOW THEREFORE, BE IT ORDAINED** that the Board of Trustees of the Village of Magdalena adopts the following Ordinance establishing a tax on lodging within the Village.

**Section 1. PURPOSE**

The purpose of this Ordinance is to impose a tax which will be borne by persons using commercial lodging accommodations, which tax will provide revenue for advertising, publicizing, and promoting tourist-related attractions, facilities, and events. This updated Ordinance incorporates changes in the law.

**Section 2. DEFINITIONS**

- A. **Governing Body.** The Board of Trustees of the Village of Magdalena, New Mexico.
- B. **Gross Taxable Rent.** The total amount of rent paid for lodging, not including the state gross receipts tax or local sales taxes.

- C. **Lodging.** The transaction of furnishing rooms or other accommodations by a vendor to a vendee who for rent uses, possesses or has to right to use or possess the rooms or other units of accommodations in or at a taxable premises.
- D. **Lodgings.** The rooms or other accommodations furnished by a vendor to a vendee by a taxable service of lodgings.
- E. **Occupancy Tax.** The tax on lodging authorized by the Lodgers' Tax Act.
- F. **Person.** A corporation, firm, other body corporate, partnership, association or individual. Person includes an executor, administrator, trustee, receiver or other representative appointed according to law and acting in a representative capacity. Person does not include the United States of America, the State of New Mexico, any corporation, department, instrumentality or agency of the federal government or the state government or any political subdivision of the State.
- G. **Rent.** The consideration received by a vendor in money, credits, property or other consideration valued in money for lodgings subject to an occupancy tax authorized in the Lodgers' Tax Act.
- H. **Taxable Premises.** A hotel, apartment, apartment hotel, apartment house, lodge, lodging house, rooming house, motor hotel, guest house, guest ranch, ranch resort, guest resort, mobile home, motor court, auto court, auto camp, trailer court, trailer camp, trailer park, tourist camps, cabin or other premises used for lodging.
- I. **Tourist.** A person who travels for the purpose of business, pleasure or culture to a municipality imposing an occupancy tax.
- J. **Tourist-Related Events.** Events that are planned for, promoted to and attended by tourists.
- K. **Tourist-Related Facilities and Attractions.** Facilities and attractions that are intended to be used or visited by tourists.
- L. **Tourist-Related Transportation Systems.** Transportation systems that provide transportation for tourists to and from tourist-related facilities and attractions and tourist-related events.
- M. **Vendee.** A natural person to whom lodgings are furnished in the exercise of the taxable service of lodging.

- N. Vendor. A person or his agent furnishing lodgings in the exercise of the taxable service of lodging.

**Section 3. AMOUNT OF TAX**

The occupancy tax shall be five percent (5%) of the gross taxable rent.

**Section 4. PROCEEDS OF TAX**

- A. Not less than one-half (1/2) of the proceeds from the first three percent (3%) of the tax and not less than one-fourth (1/4) of the proceeds from the tax in excess of three percent (3%) shall be used only for advertising, publicizing and promoting tourist-related attractions, facilities, and events.
- B. The proceeds from the occupancy tax in excess of the amount required to be used for advertising, publicizing and promoting tourist-related attractions, facilities, and events may be used to defray the costs of:
- a. collecting and otherwise administering the tax, including the performance of audits required by the Lodgers' Tax Act and this Ordinance pursuant to guidelines issued by the Department of Finance and Administration;
  - b. establishing, operating, purchasing, constructing, otherwise acquiring, reconstructing, extending, improving, equipping, furnishing or acquiring real property or any interest in real property for the site or grounds for tourist-related facilities, attractions or transportation systems of the municipality;
  - c. the principal of and interest on any prior redemption premiums due in connection with and any other charges pertaining to revenue bonds authorized by NMSA 1978, Section 3-38-23 or 3-38-24;
  - d. advertising, publicizing and promoting tourist-related attractions, facilities and events of the municipality and tourist facilities or attractions within the area;
  - e. providing police and fire protection and sanitation service for tourist-related events, facilities and attractions located in the municipality; or

- f. any combination of the foregoing purposes or transactions in this subsection, but for no other municipal purpose.
- C. The proceeds from the occupancy tax that are required to be used to advertise, publicize and promote tourist-related attractions, facilities, and events shall be used within two (2) years of the close of the fiscal year in which they were collected and shall not be accumulated beyond that date or used for any other purpose.

**Section 5. REGISTRATION AND ISSUANCE OF VENDOR LICENSE**

- A. No vendor shall engage in the operation of taxable premises in the Village of Magdalena who has not first obtained a license as provided in this Section.
- B. Applicants for a license to operate a taxable premises shall submit an application to the Village Clerk for each taxable premises, stating:
  - a. The name of the vendor including identification of any person, as defined by this Ordinance, who owns or operates, or both owns and operates, a taxable premises and the name or trade names under which vendor proposes to do business and the post office address thereof;
  - b. A description of the taxable premises, including the number of rooms and the usual schedule of rates therefore;
  - c. Current revenue division taxpayer identification number or evidence of application for a current revenue division taxpayer identification number. The Village shall not issue or renew a business license to a vendor who has not furnished this information;
  - d. To what extent the vendor claims an exemption(s) from this Ordinance;
  - e. Any other information reasonable necessary to effect a determination of eligibility for such license.
- C. The registration fee for both issued and renewed licenses shall be set at thirty-five dollars (\$35.00) per year; the fees shall not be prorated.
- D. Each calendar year, between January 1 and April 1, any taxable premises within the Village shall apply for the renewal of its vendor's license with the Village Clerk.

- E. Upon completion of registration requirements, the Clerk shall issue or renew a vendor's license in the form of a certificate within ten (10) working days or the matter be placed on the next Regular or Special Meeting Agenda for review pursuant to Section 6 of this Ordinance.

**Section 6. DENIAL OR REVOCATION OF LICENSE**

- A. For the purpose of regulation and when deemed in the public interest, the governing body may refuse to grant a license.
- B. Whenever a person or entity is guilty of violating this or another ordinance relating to the granting of a license, or in the judgment of the governing body the public welfare requires a license be revoked, the governing body may revoke the license.
- C. No license shall be refused or revoked until the person or entity seeking the license or renewal has been given the opportunity of a hearing by the governing body. After such hearing, the majority of the governing body may still refuse to grant or renew a license.

**Section 7. EXEMPTIONS**

- A. The occupancy tax shall not apply if a vendee:
  - a. Has been a permanent resident of the taxable premises for a period of at least thirty (30) consecutive days; or
  - b. Enters into or has entered into a written agreement for lodgings at the taxable premises for a period of at least thirty (30) consecutive days;
  - c. Pays less than two dollars (\$2.00) per day
- B. The occupancy tax shall not apply to lodging accommodations:
  - a. At institutions of the federal government, the state, or any political subdivision thereof;
  - b. At religious, charitable, educational or philanthropic institutions, including accommodations at summer camps operated by such institutions;
  - c. Clinics, hospitals, or other medical facilities;



- d. To privately owned and operated convalescent homes or homes for the aged, infirm, indigent, or chronically ill.
- C. The occupancy tax shall not apply if the vendor does not offer at least three (3) rooms within or attached to a taxable premises for lodging or at least three (3) other premises for lodging or a combination of these within the taxing jurisdiction.

**Section 8. CREATION and RETENTION OF RECORDS**

- A. Each vendor shall make a report by the twenty-fifth (25<sup>th</sup>) day of each month on forms (known as returns) provided by the Village Clerk of the receipts for lodging paid in the preceding calendar month, verified on oath of the vendor;
- B. Vendors shall maintain vendee receipts or other accurate and regularly updated records reflecting the number of rooms and the number of nights the rooms are rented, and whether such rentals are claimed as exempt and the reasons(s) therefore;
- C. Vendors shall maintain tax returns or any other records required by any other law;
- D. Vendor shall maintain the above records in Magdalena, New Mexico;
- E. The records shall be available and open to inspection by the Village during reasonable hours;
- F. Records and shall be retained for at least three (3) years.

**Section 9. COLLECTION and PAYMENT OF TAX**

- A. Every vendor providing lodgings shall collect the tax thereon on behalf of the Village and shall act as a trustee therefor;
- B. The tax herein shall be collected from vendees in accordance with this Ordinance and shall be charged separately from the rent fixed by the vendor for the lodgings;
- C. Each vendor shall be liable to the Village of Magdalena for the tax provided herein on the rent paid for lodging at each taxable premises;
- D. Payment shall be made by the twenty-fifth (25<sup>th</sup>) day of each month for lodging paid in the preceding calendar month in the form of check or money order; in

person at Village Offices or by U.S. mail or another reliable shipment or courier service.

#### **Section 10. REFUNDS and CREDITS**

- A. If any person believes they have made payment of occupancy tax in excess of that for which they were liable, they may claim a refund thereof by directing to the Village Clerk, no later than ninety (90) days from the date payment was made, a written claim for refund. Every claim for refund shall state the nature of the person's complaint and the affirmative relief requested. The Village Clerk shall allow the claim in whole or in part or may deny it within ten (10) working days of receipt of the complaint. If the person is not satisfied with the Clerk's proposed resolution, the person may request an appeal to the governing body within ten (10) working days of receipt of the Clerk's decision.
- B. Refunds of tax erroneously paid and amounting to one hundred dollars (\$100.00) or more may be made only with the approval of the governing body.

#### **Section 10. AUDITS OF VENDORS**

- A. Random audits shall be conducted to verify full payment of occupancy tax receipts.
- B. The governing body shall periodically select taxable premises and vendors subject to audit at an open meeting by selecting one of its members to draw from a collection of currently licensed vendors;
- C. No vendor shall be subject to random audit more than once per year;
- D. The audits may be performed by the Village Clerk or by any other designee selected by the governing body;
- E. Copies of audits completed shall be filed annually with the local government division of the department of finance and administration;
- F. It is unlawful for any employee of the Village of Magdalena to reveal to any person other than another employee, member of the governing body of the Village of Magdalena, or employee or representative of the local government division of the department of finance and administration, any information contained in the

return or audit of any taxpayer, including vendors subject to the Lodgers' Tax Act, except to a court of competent jurisdiction in an action relating to taxes to which the Village of Magdalena is a party, or to the taxpayer or their authorized representative.

**Section 11. ADMINISTRATION and REPORTING**

- A. The governing body of the Village of Magdalena shall administer the occupancy tax monies collected;
- B. The governing body shall furnish to the Advisory Board that portion of any proposed budget, report or audit filed or received by the governing body pursuant to either Chapter 6, Article 6 NMSA 1978 or the Audit Act that related to the expenditure of occupancy tax funds within ten (10) days of the filing or receipt of such proposed budget, report or audit by the governing body;
- C. The governing body shall report to the local government division of the department of finance and administration on a quarterly basis any expenditure of occupancy tax funds pursuant to Sections 3-38-15 and 3-38-21 NMSA 1978 and shall furnish a copy of this report to the Advisory Board when it is filed with the division.

**Section 12. ADVISORY BOARD**

- A. The Mayor shall appoint a five (5) -member advisory board that consists of two (2) members who are owners or operators of lodgings subject to the occupancy tax within the Village, two (2) members who are owners or operators of industries located within the Village that primarily provide services or products to tourists, and one (1) member who is a resident of the Village and represents the general public.
- B. Members of the Advisory Board shall serve at the pleasure of the Mayor.
- C. The Advisory Board shall advise the governing body on the expenditure of funds to be used for advertising, publicizing and promoting tourist-related attractions, facilities and events in the Village.

- D. The Advisory Board shall submit to the government body recommendations for the expenditures of funds for advertising, publicizing and promoting tourist-related attractions, facilities and events in the Village.

**Section 13. CONTRACTING FOR SERVICES**

- A. The governing body may contract for the management of programs and activities funded with the revenue from the tax authorized for use for advertising, publicizing and promoting tourist-related attractions, facilities and events. The governing body shall require periodic reports to the governing body, at least quarterly, listing the expenditures for those periods. Within ten (10) days of receiving the reports, the governing body shall furnish copies of them to the Advisory Board. Funds provided to the contracting person or governmental agency shall be maintained in a separate account established for that purpose and shall not be commingled with any other money.
- B. A person or governmental agency with whom the Village contracts under this Section to conduct an activity authorized by Section 4(B) of this Ordinance shall maintain complete and accurate financial records of each expenditure of the tax revenue made and upon request of the governing body, shall make such records available for inspection.
- C. The occupancy tax revenue spent for a purpose authorized by this Ordinance may be spent for day-to-day operations, supplies, salaries, office rental, travel expenses and other administrative costs only if those administrative costs are incurred directly for that purpose.
- D. A person or governmental agency with whom the Village contracts under this Section may subcontract with the approval of the governing body. A subcontractor shall be subject to the same terms and conditions as the contractor regarding separate financial accounts, periodic reports and inspection of records.

**Section 14. CIVIL ENFORCEMENT and LIENS**

- A. A vendor is liable for the payment of the proceeds of any occupancy tax that the vendor failed to remit to the Village, due to failure to collect the tax or otherwise.
- B. The Village may bring an action in law or equity in the Seventh Judicial District Court for the collection of any amounts due, including without limitation penalties thereon, interest on the unpaid principal at a rate not exceeding one percent a month, the costs of collection and reasonable attorneys' fees incurred in connection therewith;
- C. The civil penalty for failure to remit payment in a timely manner is an amount equal to the greater of ten percent (10%) of the amount that was not duly remitted or one hundred dollars (\$100.00).
- D. The occupancy tax constitutes a lien in favor of the Village upon the personal and real property of the vendor providing lodgings. The lien may be enforced as provided in Sections 3-36-1 through 3-36-7 NMSA 1978. Priority of the lien shall be determined from the date of filing.
- E. Under process or order of court, no person shall sell the property of any vendor without first ascertaining from the Village Clerk the amount of any occupancy tax due the Village. Any occupancy tax due the Village shall be paid from the proceeds of the sale before payment is made to the judgment creditor or any other person with a claim on the sale proceeds.
- F. The Village Clerk shall furnish to any person applying for such a certificate a certificate showing the amount of all liens in the records of the Village against any vendor.

**Section 15. CRIMINAL PENALTY**

Any person who violates the provision of this Lodgers' Tax Ordinance by a failure to pay the tax, to remit proceeds thereof to the Village, or to account properly for any lodging and the tax proceeds pertaining thereto, shall be guilty of a misdemeanor and upon conviction shall be fined in an amount of not more than five hundred dollars (\$500) or imprisonment of not more than ninety (90) days, or both.

**Section 16. SEVERABILITY**

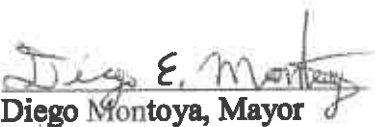
If any section, subsection, sentence, clause, word or phrase of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Trustees hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, word or phrase thereof irrespective of the fact that any one or more section, subsection, sentence, clause, word or phrase thereof be held unconstitutional or otherwise invalid.

**Section 17. REPEALER**

The "Village of Magdalena Lodgers Tax Ordinance" contained in Article 1, Chapter 6 of the Municipal Code and all subsequent amendments thereto are repealed, and any other ordinance, resolution, or rule directly in conflict with this ordinance is hereby repealed to the extent of such conflict.

Passed, Approved, and Adopted this 14<sup>th</sup> day of December, 2015.

Approved:

  
Diego Montoya, Mayor

  
Katherine Riley, General Counsel as to  
legal sufficiency

Attested:

  
Stephanie Finch  
Village Clerk/Treasurer