

Village of Tijeras
Personnel Ordinance
No. 195



**AN ORDINANCE ADOPTING PERSONNEL ORDINANCE NO. 195
AND REPEALING PERSONNEL ORDINANCE NO. 175**

WHEREAS, the Governing Body of the Village of Tijeras, New Mexico previously adopted Personnel Ordinance No. 175 and

WHEREAS, the Governing Body wishes to repeal Personnel Ordinance No. 175 and adopt a new Personnel Ordinance No. 195.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE VILLAGE OF TIJERAS AS FOLLOWS:

Section 1. Personnel Policy. Attached hereto and incorporated herein by reference is the Personnel Policy, the contract of employment between the Municipal Corporation Village of Tijeras and its employees.

Section 2. If any section, subsection, sentence, clause, word or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The Village Council of Tijeras, New Mexico hereby declares that it would have passed the Ordinance and each section, subsection, sentence, clause, word or phrase thereof irrespective of any one or more sections, subsections, sentences, clauses, words or phrases being declared unconstitutional or otherwise invalid.

Section 3. Repeals Village of Tijeras Ordinance No. 175.

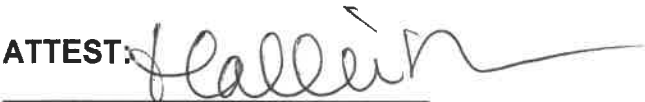
PASSED, ADOPTED AND APPROVED BY THE GOVERNING BODY OF THE VILLAGE OF TIJERAS, THIS 2nd DAY OF NOVEMBER 2020.

By:



Mayor Jake Bruton

ATTEST:



Clerk/Manager Hallie Brown



PERSONNEL ORDINANCE

NO. 195

TABLE OF CONTENTS

SECTION 1. RESPONSIBILITIES OF THE MAYOR FOR PERSONNEL FUNCTIONS.....3

SECTION 2. RESPONSIBILITIES OF THE GOVERNING BODY FOR PERSONNEL FUNCTIONS.....4

SECTION 3. RESPONSIBILITIES OF THE VILLAGE CLERK/MANAGER FOR PERSONNEL FUNCTIONS.....5

SECTION 4. EMPLOYMENT BY THE VILLAGE OF TIJERAS.....6

SECTION 5. VOLUNTEER FIRE DEPARTMENT PERSONNEL.....6

SECTION 6. PROBATIONARY PERIOD.....7

SECTION 7. PERFORMANCE EVALUATIONS.....7

SECTION 8. COMPENSATION.....7

SECTION 9. WORK HOURS.....8

A. FULL TIME HOURLY EMPLOYEES.....8

B. PART TIME HOURLY EMPLOYEES.....8

C. OVERTIME.....8

SECTION 10. EMPLOYEE BENEFITS.....9

A. HOLIDAYS.....9

B. VACATION AND SICK LEAVE.....9

C. BEREAVEMENT LEAVE.....10

D. SICK AND EMERGENCY LEAVE.....10

E. INSURANCE AND RETIREMENT BENEFITS.....11

F. JURY DUTY.....12

G. RETIREMENT.....12

H. ANNUAL AND EMERGENCY MILITARY LEAVE.....12

I. LEAVE TO VOTE.....12

J. EARLY DISMISSAL.....13

K. INJURIES IN PERFORMANCE OF DUTY.....13

L. LEAVE WITH PAY.....	14
M. PERSONAL LEAVE WITHOUT PAY.....	14
N. MATERNITY/PATERNITY LEAVE.....	14
SECTION 11. TERMINATION OF EMPLOYMENT.....	16
SECTION 12. CONFLICT OF INTEREST.....	17
SECTION 13. PROHIBITIONS.....	21
SECTION 14. DRUG POLICY.....	23
SECTION 15. SEXUAL HARASSMENT POLICY.....	24
SECTION 16. DISCIPLINARY ACTION, APPEAL, AND GRIEVANCE.....	25
A. RULES OF EMPLOYEE CONDUCT.....	25
B. JUST CAUSE FOR DISCIPLINARY ACTION.....	26
C. PROGRESSIVE DISCIPLINE.....	27
D. DOCUMENTATION.....	27
E. RANGE OF COUNSELING AND DISCIPLINE.....	27
F. NOTICE OF INTENT TO DISCIPLINE.....	29
G. PRE-DISCIPLINARY MEETING AND NOTICE OF FINAL ACTION.....	30
H. ADMINISTRATIVE LEAVE WITH PAY PENDING INVESTIGATION AND/OR DISCIPLINARY PROCEEDING.....	31
I. GRIEVANCE PROCEDURE.....	32
J. POST-DISCIPLINE APPEAL.....	33
SECTION 17. HOURLY/SALARY EMPLOYEES.....	36
A. EXEMPT EMPLOYEES.....	36
B. TEMPORARY AND SEASONAL EMPLOYEES.....	37
C. ELECTED OFFICIALS.....	37
SECTION 18. COMPUTER AND CELL PHONE USE.....	37

**PERSONNEL ORDINANCE
NO. 195**

SECTION 1. RESPONSIBILITIES OF THE MAYOR FOR PERSONNEL FUNCTIONS

The Mayor is the Chief Executive Officer of the Village and shall:

- A. Cause the ordinances and regulations of the municipality to be obeyed;
- B. Exercise, within the municipality, powers conferred upon sheriffs of counties to suppress disorders and keep the peace;
- C. Perform other duties, compatible with his office, which the governing body may require;
- D. At organizational meeting of the governing body, which shall be scheduled pursuant to Section 3-8-33 NMSA 1978 of the Municipal Election Code, submit, for confirmation by the governing body, the names of persons who shall fill the appointive offices of the municipality and the names of persons who shall be employed by the municipality;
- E. Subject to the approval of a majority of all members of the governing body, appoint all officers and employees except those holding elective office;
- F. Designate an employee to perform any service authorized by the governing body;
- G. Supervise the employees of the municipality;
- H. Examine the grounds of reasonable complaints made against any employee;
- I. Examine the grounds of any Clerk/Manager recommended promotion, demotion, termination, or disciplinary action;
- J. Cause any violations or neglect of the employees' duties to be corrected promptly or reported to the proper authority for correction and punishment;
- K. With the approval of a majority of all the members of the governing body discharge an appointed official or employee;
- L. With the approval of a majority of all the members of the governing body suspend an appointed official or employee until the next regular meeting of the governing body;

- M. Upon request by any appointed official or employee who is discharged, give in writing a list of reasons for their discharge or discipline;
- N. Sign all commissions, licenses, and permits granted by the governing body, and other acts that law or ordinances may require, or the commissions, licenses and permits may be authenticated as authorized under the Uniform Facsimile Signature of Public Officials Act [Sections 6-9-1 to 6-9-6 NMSA 1978];
- O. Determine if an employee may be required to bring in a doctor's excuse in support of sick leave;
- P. Hear or appoint a hearing officer or upon receipt of a grievance complaint;
- Q. Decide upon grievance complaints in accordance with the grievance procedure;
- R. Designate a Deputy Clerk to assume the duties of the Village Clerk in the event of his or her inability to act or in the event his or her absence; and
- S. Maintain an effective system of personnel administration.

SECTION 2. RESPONSIBILITIES OF THE GOVERNING BODY FOR PERSONNEL FUNCTIONS

The Village Governing Body shall:

- A. By vote of a majority of all members, approve or disapprove Mayoral appointments, dismiss or suspend with or without pay any employee or appointed official, and decide any proper appeals of employees or appointed officials under the personnel ordinance;
- B. Elect one of its members to act as mayor pro tem in the absence of the mayor;
- C. Possess all powers granted by law, and other municipal powers not conferred by law or ordinance on another officer of the municipality;
- D. Manage and control the finances and all property, real and personal, belonging to the municipality;
- E. Determine the time and place of holding its meetings, which shall be open to the public;
- F. Determine the rules of its own proceedings;

- G. Keep minutes of its proceedings, which shall be open to examination by any citizen;
- H. Adopt rules and regulations necessary to affect the powers granted municipalities;
- I. Prescribe the compensation and fees to be paid municipal officers and employees;
- J. Prescribe the powers and duties of those officers whose terms of office or powers and duties are not defined by law and impose additional powers and duties upon those officers whose powers and duties are prescribed by law.
- K. Appoint a Claims Review Board if necessary;
- L. Oversee the procedures and expenditures of the Volunteer Fire Department;
- M. Sit as a Personnel Board, if necessary, in accordance with the grievance and disciplinary procedures; and
- N. By vote of a majority or all members adopt personnel policy work rules by Resolution.

SECTION 3. RESPONSIBILITIES OF THE VILLAGE CLERK/MANAGER

The Village Clerk/Manager, under the directions of the Mayor, shall have the day-to-day responsibility for the administration of personnel matters including the following:

- A. Supervise all Village of Tijeras employees;
- B. Prepare and recommend to the Mayor such changes in the Ordinance as may be considered necessary and appropriate;
- C. Maintain a job classification plan and assure that job descriptions are prepared and maintained for each job classification and submit such to the Mayor and Governing Body for approval;
- D. Establish and maintain a roster of all officers and employees. Maintain a personnel file on each employee which will include job classification, supporting background, performance records and other relevant data;
- E. Develop *written* procedures for the evaluation of employees and submit such for approval of the Mayor and Governing Body;
- F. Develop forms to document approval to attend training and submit such for review and approval of the Mayor and Governing Body;

- G. Initiate in **writing with documentation** the promotion or disciplinary action of employees;
- H. Approve job classifications, descriptions and pay scales;
- I. Appoint a Personnel Board as needed, in accordance with the provisions of Section 3-13-4 NMSA 1978 and all amendments hereto; and
- J. Prepare and recommend Village of Tijeras Personnel Policies for Council approval. Those polices include, but are not limited to such topics as:
 - a. Internet use.
 - b. Cell Phone Use.
 - c. Harassment.
 - d. Personnel Feedback and Evaluations.
 - e. Maintaining a Safe Work Environment.
 - f. Workplace Violence.
 - g. Weapons in the Workplace.
 - h. Protection and inventory of Village property.

SECTION 4. EMPLOYMENT BY THE VILLAGE OF TIJERAS

- A. Vacant or new positions shall be filled as per requirements and qualifications specified from:
 - 1. Within any Village of Tijeras Municipal Department.
 - 2. The general public as an Equal Opportunity employer.
- B. The Village of Tijeras is an Equality Opportunity employer and does not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, handicap or veteran status provided the individual is otherwise qualified to perform the work available.

SECTION 5. VOLUNTEER FIRE DEPARTMENT PERSONNEL

- A. Volunteer Fire Personnel will comply with the By Laws adopted by the Mayor and Governing Body and as mandated by the State Fire Marshal.
- B. All Volunteer Fire Personnel will submit to a background check.
- C. At an interval determined by the Fire Chief, all Volunteer Fire Personnel shall be subject to regular written evaluations that shall be forwarded to the Village Clerk/Manager within fourteen (14) days after their completion.

SECTION 6. PROBATIONARY PERIOD

- A. New and promoted employees hired for part-time or full-time positions, except employees classified as at-will, shall serve a probationary period of six (6) months. A performance evaluation shall be conducted by the Village Clerk/Manager at regular monthly intervals during the probationary period. Employees in a probationary status may be terminated or demoted at any time with or without cause, or if they receive a negative performance evaluation. Upon written submission of a satisfactory job performance evaluation from the department head, new employees will obtain a regular status at the end of their probationary period. New employees on probationary status will accrue but are not entitled to take vacation, PTO, and/or sick leave. An employee who quits while on probationary status will not receive payment for their unused vacation leave balance.
- B. New employees on probationary status are not entitled to rights and benefits provided under the disciplinary and grievance procedures of the Ordinance.

SECTION 7. PERFORMANCE EVALUATIONS

- A. It is required that the supervisor utilize the performance evaluations of previous periods to review and discuss the overall progress of the employee with respect to Village employment. A performance evaluation form approved by the Village Governing Body will be completed annually per year for each employee evaluated.

SECTION 8. COMPENSATION

- A. Compensation of employees shall be based on job classifications. Job classifications shall be based on authority, responsibility and duties of positions in the Village of Tijeras.

- B. An annual and/or merit increase in pay may be granted to employees based on performance evaluation and other relevant factors.
- C. Employees shall not be paid less than the State and Federal minimum wage.
- D. In the event the Village offices are closed due to unusual circumstances, all employees will be paid for their scheduled work hours.

SECTION 9. WORK HOURS

A. FULL TIME HOURLY EMPLOYEES

The normal schedule for full time hourly employees shall consist of forty (40) hours to be worked in five (5) days each week. The normal workday for full time hourly employees shall consist of eight (8) hours of work. The exact schedule of working hours shall be determined by the Clerk/Manager, and the employees shall be informed of their daily work schedule. Employees may not clock in more than 5 minutes before their official start time.

B. PART TIME EMPLOYEES

Part time employees will work the hours designated by the Clerk/Manager. Employees may not clock in more than 5 minutes before their official start time.

C. OVERTIME

There may be occasions when employees will be required to work more than their normal schedule. Overtime will be assigned by the supervisor to employees performing the particular job functions which require the overtime. However, no employee is permitted to work overtime unless authorized in advance by the supervisor with the approval of the Clerk/Manager. **Failure to comply may result in a write up and/or dismissal.**

Employees whose jobs are not exempt from the Federal Fair Labor Standards Act and who work more than forty (40) hours in any work week shall be paid for overtime work at one and one half (1 ½) times their hourly rate of pay.

SECTION 10. EMPLOYEE BENEFITS

A. HOLIDAYS

Legal holidays as observed by the State of New Mexico will be posted annually and may include the following:

- New Year's Day
- Martin Luther King Jr. Birthday
- President's Day
- Memorial Day
- Independence Day
- Labor Day
- Indigenous People's Day
- Veteran's Day
- Thanksgiving Day
- Day after Thanksgiving
- Christmas Day

If any employee calls in sick the day before or the day after a holiday, the employee may be required to submit a written doctor's excuse as determined by the Clerk/Manager.

Employees working a regularly scheduled 40-hour work week will be eligible for holiday pay. Part time employees working twenty (20) hours per week, are entitled to holiday pay for the number of hours normally worked.

All full-time employees, under this Ordinance, called to work on holidays will be paid time and a half.

B. VACATION, PTO & SICK LEAVE

Full time employees working forty (40) hours per week shall accumulate leave in accordance with the following schedule:

	VACATION	PTO	SICK
less than 5 years	10 Days	2 Days	10 Days
5 years but less than 10 years	15 Days	2 Days	10 Days
10 or more years	20 Days	2 Days	10 Days

Vacations will be scheduled based on seniority status. A maximum of two (2) weeks of vacation will be allowed at any one (1) time.

In the event of dissolution of the Village of Tijeras, or any major reorganization of programs as may be determined appropriate by the Village Council, all or any employees which shall be affected will be compensated for all authorized compensation time, or vacation time as of the established date of termination.

Employees are encouraged to use their vacation by June 30th of each year. With permission from the Clerk/Manager, employees may carry over vacation annually for a maximum of 200 hours. Employees will forfeit any remaining time. Under special circumstances, the Mayor with the approval of the Governing Body may grant extra carry over or payment.

Employees may carry over sick leave for a maximum of 500 hours. There will be no payout of sick leave upon termination. Mayor and Council may allow for additional carry over time in special circumstances.

Employees who use 5 or less sick days in a fiscal year will receive an additional PTO day the following fiscal year. Maximum of 5 PTO days may be carried over.

Vacation and sick time use will be deducted in increments of 15 minutes.

Two (2) weeks' notice must be given upon termination in order to receive vacation pay.

C. **BEREAVEMENT LEAVE**

Full-time and non-temporary part-time employees shall receive five (5) days administrative leave with pay in the event of death of the employee's spouse, child, stepchild, father, mother, brother, sister, step parents, grandparents, father in law, mother in law or significant other.

Extended leave may be granted at the discretion of the Village Clerk/Manager, and will be charged to the employee's time or may be granted as leave without pay.

D. **SICK LEAVE AND EMERGENCY LEAVE**

Employees utilizing sick leave for three (3) or more consecutive days will be required to submit a written doctor's excuse. Whenever the

supervisor believes an employee has abused sick leave, a written doctor's excuse may be required. Sick leave may be used for doctor appointments.

Upon the death of an employee from natural or accidental causes, 100% of the employee's vacation and PTO leave shall be converted to a cash payment. This will be paid to the employee's current designated beneficiary.

Holidays which occur during an employee's sick leave will not be charged to their sick leave time.

Employees who exhaust their sick leave may use their vacation time or may be granted leave without pay up to one (1) year, with the approval of the Mayor.

Employees shall receive five (5) days emergency leave with pay in the event of a terminally ill spouse, significant other, child or stepchild. Three (3) days absence with pay shall be granted due to terminal illness of a father, mother, brother, sister, stepparents or grandparents with the Mayor's approval.

E. INSURANCE BENEFITS

Employees shall be eligible for life and health insurance benefits after a 30-day period.

Subject to the Village's right to make changes in benefits and employer contributions, all regular employees are eligible to participate in the Village employee benefit insurance program (as described in materials provided by the carrier).

Regular Village employees with insurance coverage shall have COBRA continuation rights and may self-pay in the event their pay is not sufficient to make the required employee contribution.

Upon receiving Worker's Compensation benefits, the Village may continue to pay the employee's health insurance premiums for one month. After that the employee may choose to self-pay insurance premiums under COBRA.

Upon termination an employee may elect to self-pay all health insurance premiums under COBRA.

COBRA continuation rights are contingent on the former employee's timely paying directly to the carrier when due an amount equal to

102% (or whatever is in effect at the time) of the employer/employee contribution.

F. **JURY DUTY**

Any full time or non-temporary part-time employee who is called to serve required jury duty may be paid his or her regular pay for the employee's scheduled work time while serving on jury duty. The Village shall not deprive an employee of employment or threaten or otherwise coerce the employee because the employee receives a summons for jury service, responds to the summons, serves as a juror or attends court for prospective jury service. The Village shall not require or request an employee to use annual, vacation or sick leave for time spent responding to a summons for jury service, participating in the jury selection process or serving on a jury. Nothing in this subsection requires The Village to provide annual, vacation or sick leave to employees who are not otherwise entitled to those benefits under company policies.

G. **RETIREMENT**

The Village does not discriminate on the basis of age. The Village participates in the Public Employees Retirement Association Fund.

H. **ANNUAL AND EMERGENCY MILITARY LEAVE**

Military leave without pay will be authorized for regular employees who are members of the National Guard or Air National Guard of New Mexico, and/or who are members of any organized reserve unit of the Armed Forces of the United States, including Public Health Services, when ordered to active duty training with such units. Employees called to active duty in emergencies declared by the President may be granted military leave. A copy of all orders must be attached to all requests for annual and/or emergency military leave.

I. **LEAVE TO VOTE**

Pursuant to Section 1-12-42 NMSA 1978, employees who shall be granted two (2) hours of paid leave between the opening and closing of the polls to vote on election days. Department heads must schedule and grant this time off for voting as requested by employees. Any voter who is enrolled as a member of an Indian nation, tribe or pueblo and is qualified to vote in the election are entitled to the same considerations. This does not apply to an employee whose work day begins more than two hours subsequent

to the time of opening the polls, or ends more than three hours prior to the time of closing the polls. Any time which is taken off for voting cannot be used for any other purposed.

J. **EARLY DISMISSAL**

The Village Clerk/Manager has the authority to declare an early dismissal or late reporting due to hazardous weather conditions.

K. **INJURIES IN PERFORMANCE OF DUTY**

An employee who is disabled due to an on-the-job injury or occupational illness may elect to use sick leave for the scheduled hours lost, until weekly disability benefits commence in accordance with the provisions of the New Mexico Worker's Compensation Act.

Any employee who witnesses or suffers an on-the-job injury or occupational illness has a duty to report said injury or illness to their supervisor immediately. Failure to do so may jeopardize disability benefits.

Supervisors who witness or suffer an on-the-job injury or occupational illness have a duty to report said injury or illness to the Village Clerk/Manger immediately.

Any member of the Governing Body who witnesses or suffers an on-the-job injury or occupational illness has a duty to report said injury or illness to the Village Clerk/Manager immediately.

If the Mayor witnesses or suffers an on-the-job injury or occupational illness, he/she has a duty to report said injury or illness to the Village Council or Village Clerk/Manager immediately.

In the absence of sick leave, the employee may request vacation time for this period. Otherwise, such hours will be without pay.

In the event of such disability, the employee must provide to the supervisor a written statement from his/her physician verifying the medical reason for the disability and indicating the estimated length of disability.

Employees will be eligible to maintain their benefits during the period of such disability provided they make the appropriate benefit payment to the Village on a timely basis.

The Village will hold the disabled employee's position open unless, due to business necessity, it is necessary to fill the position on a regular basis. In such event, when the employee is released by

his/her physician to return to normal duties, the employee will be reinstated to a position of like status and pay, if available. If no such position is available, the employee will be terminated from employment with the Village but will be given preferential consideration for re-employment for a period of six (6) months.

The Village has the right to request a statement from a designated qualified professional to verify the disability. Employees who have been disabled for five (5) working days or longer may be required to provide a statement from their physician releasing them from their normal duties, as stated in their job description.

L. **LEAVE WITH PAY**

Leave with pay may be granted to employees for the purpose of participation in conferences, training, examinations and institutes directly related to the employee's work duties, provided advance approval is granted by the Village Clerk/Manager.

M. **PERSONAL LEAVE WITHOUT PAY**

For compelling personal reasons, 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 the interests of the Village's operations.

An employee must submit a request in writing setting forth the inclusive dates and reason(s) for the leave requested to the Village Clerk/Manager. Such a request must be approved by the Governing Body.

N. **PARENTAL LEAVE (MATERNITY/PATERNITY LEAVE)**

Employees are entitled to maternity/paternity leave.

1. **PARENTAL LEAVE**

It shall be the policy of the Village, in line with the Office of the Governor, to provide twelve (12) workweeks of fully paid parental leave to Eligible Employees following the birth or adoption of a child. Paid parental leave shall be paid based upon the Eligible Employee's base salary (excluding temporary increases of pay, such as temporary promotion increases, temporary recruitment differentials, temporary retention differentials, or

temporary salary increases) determined by the employee's regularly scheduled work hours.

As used in this section, an Eligible Employee means a full-time classified employee who has completed the 6-month probationary period as defined herein, or an exempt employee who has been employed with the Village 6-months prior to the start of paid parental leave, excluding temporary, emergency, and term appointments. Paid parental leave may not be donated and any such leave not utilized within the six-month period explained below shall be forfeited. Domestic partners as defined by the State Personnel Board rules are eligible for paid parental leave when children join their household via birth or adoption. If both parents, including a Domestic Partner of a parent, are Eligible Employees, each parent or partner is eligible to receive Paid Parental Leave under this policy.

Eligible Employees must take paid parental leave during the first six (6) months following the birth or adoption of a child. Eligible Employees may utilize one (1) term of paid parental leave (up to 12 workweeks) per birth or adoption event. Employees utilizing paid parental leave shall continue to accrue vacation and sick leave in accordance with state rules and regulations during the period of parental leave. If an official holiday occurs during the Eligible Employee's paid parental leave, the Eligible Employee will receive holiday pay in lieu of paid parental leave, provided the Eligible Employee is in pay status the day before and the day after the official holiday.

Paid parental leave shall run concurrently with leave under the federal Family Medical Leave Act (FMLA) as applicable.

Eligible Employees cannot receive short-term disability benefits and paid parental leave benefits at the same time.

Eligible Employees shall be required to notify their employer at least thirty (30) days in advance of their intention to use paid parental leave so that the employer

may secure backfill coverage as necessary. When thirty (30) days' notice is not possible, the employee must provide this notice as soon as practicable.

SECTION 11. TERMINATION OF EMPLOYMENT

Termination of employment with the Village of Tijeras may be brought about by the employee's resignation, release, layoff or dismissal.

RESIGNATION

An employee will be considered to have resigned if the employee:

- A. Submits a letter of resignation to his/her supervisor setting forth the reasons for leaving and designating the last day of work. To maintain a good standing with the Village, employees must give notice at least ten (10) working days prior to their last day of work. The Mayor may elect to have the employee work the notice period or to pay the employee, not to exceed two (2) weeks' pay, and have the employee leave immediately.
- B. Leaves job without authorization.
- C. Is absent from work for three (3) consecutive days without prior approval.

RELEASE

No notice is required for the release of an employee at the end of temporary employment or any probation period.

LAYOFF

A layoff is the termination of an employee due to a reduction in force because of a lack of funds, lack of work, or other compelling reasons. Selection of employees for layoff shall be based on qualifications and performance as determined by the Governing Body, but if such are substantially equal, length of service shall be a determining factor.

DISMISSAL

Employees may be dismissed for unsatisfactory performance, misconduct, or other reasons deemed appropriate by the Village.

RETURN OF VILLAGE PROPERTY

At the time of termination, release, layoff, or resignation employees must return, in functioning condition, any items of Village property

issued to them. New employees must sign a contract acknowledging receipt of any items of Village property and agreeing to return Village property. Employment with the Village of Tijeras is conditional on signing the Village property contract. In addition to other penalties described in the Village property contract, the Village may pursue legal action against an employee who fails to return Village property.

SECTION 12. CONFLICT OF INTEREST

A. Compliance with State Law

The Village of Tijeras elected officials, employees, contractors, volunteers, and appointees (hereinafter "**PUBLIC OFFICERS**") shall comply with the Law governing ethical principles of public service requiring them to:

Treat **PUBLIC OFFICER'S** positions or contracts as a public trust.

1. Use the powers and resources of the Village only to advance the public interest and not to obtain personal benefits or pursue private interests;
2. Conduct themselves in a manner that justifies the confidence placed in them by the people;
3. At all times maintain the integrity and discharge ethically the high responsibilities of public service;
4. In the Village of Tijeras public service, disclose all real or potential conflicts of interest and at all times avoid undue influence and abuse of office;
5. Never offer, request or receive any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act. (Conviction of such being a fourth-degree felony see Section 31-18-15 NMSA 1978);
6. Never engage in an official act for the primary purpose of directly enhancing the public officer's financial interest or financial position;
7. Never acquire a financial interest when the public officer believes or should have reason to believe that the new

financial interest will be directly affected by the public officer's official act;

8. Never request or receive an honorarium for a speech or service rendered that relates to the performance of public duties;
9. Never participate directly or indirectly in the contracting process to become or to be, while a Village public officer, an employee of any person or business contracting with the Village;
10. Never use or disclose confidential information acquired by virtue of the public officer's position with the Village for the public officer's or another's private gain. The Village shall not enter into a contract with a public officer, with the family of the public officer, or with a business in which the public officer or the family of the public officer has a substantial interest unless the public officer has disclosed through public notice the public officer's substantial interest and unless the contract is awarded pursuant to a competitive process;
11. Never enter into a contract with, or take any action favorably affecting, any person or business that is represented personally in the matter by a person who has been a public officer of the Village within the preceding year if the value of the contract or action is in excess of one thousand dollars (\$1,000) and the contract is a direct result of an official act by the public officer;
12. Never assist in the transaction by a former public officer of the Village while a public officer directly resulting in the Village making that contract or taking that action;
13. Never for a period of one year after leaving the Village service represent for pay a person before the Village; and
14. Never accept a bid or proposal from a person who directly participated in the preparation of specifications, qualifications or evaluation criteria on which the specific competitive bid or proposal was based.

B. Applicability

This policy applies to Village **public officers** which includes Village elected officials, employees, volunteers and contractors providing professional services to the Village.

C. Administration of Policy

The Director of Human Resources or the Village Clerk/Manager, under the direction of the Village Mayor or his/her designee, shall have the responsibility and authority to ensure that all provisions of the Governmental Conduct Act (Section 10-16-3 NMSA 1978 et. seq.) and this CONFLICT OF INTEREST POLICY are followed. The Director of Human Resources and the Village Clerk/Manager shall create and submit to the Mayor for his/her approval any form deemed necessary for the execution and enforcement of this policy.

D. Individual Responsibility

It is the responsibility of each Village **public officer** to be familiar with and to follow the CONFLICT OF INTEREST POLICY.

E. Conflicts and Interpretation

If any provision of this policy is in conflict with State law or regulation applicable to the Village, then the provisions of State law or regulation shall control. The Director of Human Resources or Village Clerk/Manager, in consultation with the Village Attorney, is authorized to interpret any provision of this policy that is vague or unclear under the circumstances presented, and may provide a written interpretation of the provision, which shall be implemented consistently by all **public officers**.

F. Official Influence

Village of Tijeras **public officers** are in a unique position to influence the public's confidence and trust in Village government.

G. Benefit Village Only

The people of the Village of Tijeras expect all **public officers** to act for the benefit of the Village of Tijeras as a whole and not to favor individuals.

H. Conflict of Interest

A conflict of interest occurs when a Village **public officer** takes direct official action on a matter before the Village in which the **public officer**, or their immediate family member, business associate, or an outside employer has a substantial financial, contractual, or employment interest.

- a. Family member means an individual's spouse, parents, children, or siblings by consanguinity or affinity.
- b. Financial interest means an interest that is an ownership interest in a business or property.
- c. Contractual interest means being a party to a contract that involves the business of the Village, except when such contract is a condition of employment with the Village.
- d. Employment interest means current or anticipated future employment.

I. Federal Awards

No Village **public officer** may participate in the selection, award or administration of contracts supported by a Federal award if he or she has a conflict of interest.

J. Gifts

A gift is anything of value one receives without giving adequate and lawful compensation for it. A gift may include meals, tickets to events, travel expenses, honoraria, services, loans, rebates, and discounts (unless offered to the public or all Village officials, employees, volunteers, and appointees on the same terms and conditions).

1. A Village public officer shall not accept a gift if:
 - a. If they are in a position to take direct official action toward the giver, and
 - b. The giver has or is about to have a business, contract or regulatory relationship with the Village.
2. However, the following may be accepted even if in a position to take direct official action with regard to the giver.

- a. Gifts from another Village public officer or their family members on appropriate occasions, i.e. birthdays and funerals.
- b. Campaign contributions as permitted by law.
- c. Nonmonetary awards for public service that are presented by an organization as long as the award is not extraordinary given the recipient's position.
- d. Unsolicited items, cash, or gift cards valued at \$25.00 or less.
- e. Reasonable expenses paid by a non-profit organization or government for one to participate in a meeting if one is scheduled to make a speech, presentation, participate on a panel, or represent the Village.

K. Violation

Village **public officers** shall not participate in any official action that directly benefits themselves or their families.

L. Penalty

If a Village **public officer** violates this policy, the person may be subject to censure and/or discipline up to termination of employment, appointment, or contract. This penalty does not preclude a referral to the Attorney General or District Attorney for review, possible action to remove from office, employment, appointment or contract benefits, and prosecution of criminal violations.

SECTION 13. PROHIBITIONS

Violation of provisions of this section by an employee shall be grounds for disciplinary action up to and including dismissal.

Employees must in all instances maintain their conduct at the highest standards. No employee shall continue employment with the Village if engaged in any activity diminishing the integrity or efficiency of their position. The following is a partial and non-exhaustive list of items which may be considered by the village as causes for suspension, demotion or dismissal.

No employee shall participate in any type of political activity which uses their position or employment to influence the support of other officials or employees of the Village, or to influence support for or against any candidate or issue in any election, provided however,

that nothing herein shall deny the right of any official or employee of the Village to express their views on any issue whatsoever.

No person shall willingly or knowingly make any false statement with respect to any test, certification, or appointment or in any manner commit any fraud in connection with their employment with the Village or with the employee's official duties.

No person seeking appointment to, or promotion in, the service of the Village shall either directly or indirectly give, render, or pay any money to perform services, or give other items of value to any person for, or on account of, or in connection with any test they may be required to pass, appointment, proposed appointment or proposed promotions, provided however, that this provision shall not apply to payments made to duly licensed employment agencies.

No reward, favor, gift or other remuneration in addition to regular compensation and employee benefits shall be received by any employee for the performance or non-performance of their duties or in anticipation of such performance or non-performance of their duties from any vendor, contractor, individual or firm doing business with the Village in the future, or from any other source having or proposing to have any relationship with the Village, provided however, that this provision shall not apply to occasional non-pecuniary gifts insignificant in value, awards publicly presented in recognition of public service, acts of heroism, or for solving of crimes or commercially reasonable loans made in the ordinary course of business by an institution authorized by the laws of the State to engage in the business of making loans to individuals.

No employee shall continue outside employment if it is determined by the Mayor that such employment has a negative impact on an employee's job performance, and it is not the subject of a grievance as defined in this policy.

No relative of any employee, Mayor, or Council Member, by blood or marriage, may be employed in any position as a regular employee with the Village in which the employee may be able directly to supervise, control or influence the work or employment status of the relative or the affairs of the organizational unit in which the relative is employed.

SECTION 14. DRUG FREE WORKPLACE POLICY

It is the policy of the Village of Tijeras to provide a work environment that is free from the use, possession, sale or distribution of illegal

drugs and from the misuse of alcohol and legal drugs by Village employees. Accordingly, the Village requires that employees and contractors alike will be subject to testing to determine the presence of unacceptable levels of illegal drugs, alcohol or inappropriately used legal drugs within their bodies while performing the Village's business. Therefore, this policy is to assure that only safe and alert employees are permitted on/in the Village premises, on the Village job site locations and at any time while operating Village vehicles, or using Village equipment. This policy establishes guidelines for consistent handling of alcohol and drug usage situations throughout the Village of Tijeras.

A. Prohibited Behavior:

1. Use of illegal drugs;
2. Abuse of legal drugs or alcohol;
3. Use of alcohol or illegal drugs on Village time or property, to include scheduled or unscheduled break periods, meal times, and at all other times when the employee is considered "at work" for the Village;
4. Sale, purchase, transfer, use or possession of illegal drugs or drugs obtained illegally;
5. Transport of alcoholic beverages in Village vehicles during Village time, break periods, or meal times;
6. Arrival for work under the influence of drugs or alcohol.

An employee who is using prescription drugs or over-the-counter medications that could affect work performance must inform his/her supervisor. A written doctor's statement may be required at the Village's discretion.

B. Implementation:

The Clerk/Manager shall adopt procedures required by all applicable federal and state mandates to ensure the effective implementation of this policy. In addition to setting out the procedures for pre-employment testing and the random drug and alcohol testing of those employees covered by the federal regulations, the procedures shall provide for reasonable suspicion testing for drugs and alcohol for all Village employees.

C. Employee Assistant Plan

The Village Clerk/Manager or designee shall establish and communicate the availability of an employee assistance program for all Village employees. The Village Clerk/Manager or his/her designee shall for the benefit of all employees identify avenues for obtaining drug treatment and rehabilitation, outline available drug abuse counseling and educational programs, and describe any drug abuse rehabilitation benefits available through the Village's group health plan. Normal Village benefits, such as sick leave and the group medical plan, are available to aid in the rehabilitation process.

If the available assistance fails or is obviously inappropriate given the nature of the drug use and the employee's position, the penalty for drug use or alcohol abuse may be termination of employment

SECTION 15. SEXUAL HARASSMENT POLICY

Sexual harassment is defined as:

Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature 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 affecting such individual.

Unwelcome sexual conduct, whether verbal or physical, which directly or indirectly interferes with another person's work performance or creates an intimidating, hostile, and offensive working environment.

SECTION 16. DISCIPLINARY ACTION, APPEAL, AND GRIEVANCE

A. Rules of Employee Conduct

Reasonable rules of employee conduct are necessary for the orderly and effective operation of the Village. Some of the more obvious examples of unacceptable conduct are listed below. This list is not all inclusive and is not intended to refer to all possible policy infractions. Employees should contact the Clerk/Manager or Deputy Clerk with any questions regarding the Village's rules of employee conduct. Prohibited behaviors include:

1. Violation of the Village personnel ordinance, policies, or rules.
2. Incompetence, inefficiency, or inadequate performance of an employee's duties.
3. Insubordination or uncooperative behavior.
4. Leaving work before the end of a workday or not being ready to work at the start of a workday without approval from the employee's supervisor; stopping work before the time specified for such purpose.
5. Failure to report an absence or late arrival; excessive absence or tardiness.
6. Use of official position or authority for personal profit or advantage, including a violation of the Governmental Conduct Act, Section 10-16-1, et seq. NMSA 1978 (as amended), which sets forth the ethical principles of public service and prohibits certain official acts. A copy of the Act is available from the Clerk/Manager.
7. Violation of security or safety practices.
8. Commission of a felony or misdemeanor related to the position held by the employee or conviction of a crime involving moral turpitude.
9. Violence or threats of violence toward anyone while on duty, on Village property, driving a Village vehicle or equipment, representing the Village or wearing a Village uniform. Fighting, horseplay, or provoking a fight is prohibited.
10. Obscene, abusive, or rude language or behavior toward any supervisor, employee, or member of the public; any disorderly or antagonistic conduct.

11. Malicious gossip and/or spreading rumors; engaging in behavior designed to create discord and lack of harmony; interfering with another employee on the job; willfully restricting work output or encouraging others to do the same.
12. Misappropriation or personal use of Village funds, property, or resources; theft or fraud.
13. Intentionally or negligently causing damage to Village tools, equipment, or other property;
14. Failure to immediately report damage to, or an accident involving, Village vehicles or equipment.
15. Violation of confidentiality or release of confidential information.
16. Deliberate falsification or omission of information on an employment application, resume, timecard/record, or other Village document.
17. Soliciting during work hours and/or on Village premises; selling merchandise or collecting funds of any kind for whatever purpose without the Clerk/Manager's prior approval, or at a time or place that interferes with the work of another employee on Village property or at a Village worksite.
18. Conducting a lottery or gambling on Village premises or while on duty.
19. Failure to maintain a neat, clean, and professional appearance or wearing unsafe clothing to perform employee's specific job duties.
20. Other acts or omissions, on or off-duty, that may result in disciplinary action include those that:
 - a. Call into question the employee's ability to perform assigned duties or job functions;
 - b. Harm public respect for the Village's employees or confidence in the operation of Village services; or
 - c. Impair the operation or efficiency of any Village function.

B. Just Cause for Disciplinary Action

Failure or refusal to meet the standards of employee conduct shall constitute just cause for disciplinary action. Regular full-time and

regular part-time employees may be disciplined only for just cause. Unlike regular employees, probationary employees, temporary employees, limited-term employees and other at-will employees may be discharged without cause or for any lawful reason.

C. Progressive Discipline

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

D. Documentation

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

E. Range of Counseling and Discipline

The range of counseling and disciplinary action is as follows:

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

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

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

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

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

3. **Suspension Without Pay.** The Mayor or Clerk/Manager may suspend an employee without pay for a single serious offense or for continued substandard job performance or misconduct after previous attempts to correct such behavior have failed. Such suspension shall not exceed thirty working days (30). A suspension without pay for a FLSA exempt employee shall be in workweek increments not to exceed six workweeks, unless otherwise provided by law. A regular, full-time or regular, part-time employee may appeal a suspension without pay pursuant to the Village's grievance procedures.
4. **Demotion.** The Mayor or Clerk/Manager may demote an employee in those instances where the employee is

unwilling or unable to perform the responsibilities of his/her position. The employee may be moved from one position to another position with a lower pay rate for which the employee qualifies or, alternatively, the employee may be permitted to remain in the same position but will be subject to a reduction in his/her pay rate. Demotion is not to be used as a substitute for discharge from employment, when a discharge is warranted. A regular, full-time or regular, part-time employee may appeal a demotion pursuant to the Village's grievance procedures.

5. **Dismissal.** The Village Council may, upon the Mayor's recommendation which will be made in the form of a Notice of Intent to Discipline, dismiss an employee when other forms of discipline have failed to improve unacceptable behavior or job performance, or the employee's conduct is severe enough to preclude corrective action. A regular, full-time or regular, part-time employee may appeal a dismissal pursuant to the Village's grievance procedures.

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

F. Notice of Intent to Discipline

The Mayor, Clerk/Manager, or designee shall present the employee with a Notice of Intent to Discipline when suspension, demotion, or dismissal is contemplated. The Notice of Intent to Discipline shall include the following information: (A) the date(s) on which the unacceptable performance or conduct occurred and a brief description of the incident(s); (B) a reference to the policy(ies), rule(s) or directive(s) that were violated; (C) prior counseling or discipline, if any, imposed on employee during the employee's time with the Village; (D) a statement of the contemplated discipline; (E) a statement of the potential disciplinary consequences if performance does not improve; (F) the goals of improvement and a time frame, if applicable, to accomplish these goals; and (G) the employee's right to a pre-disciplinary hearing. The Notice of Intent to Discipline shall be hand-delivered to the employee and receipt acknowledged by

him/her, or sent to the employee by certified mail, return-receipt requested. The Notice of Intent to Discipline shall be placed in the employee's personnel file after providing the employee with a copy. If the Notice of Intent to Discipline is hand-delivered and the employee refuses to sign it, another supervisory level employee (by his/her signature) shall attest that the Notice of Intent to Discipline was presented to the employee for his/her signature and the employee refused to sign.

G. Pre-Disciplinary Meeting and Notice of Final Action

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

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

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

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

If the contemplated discipline is termination, the Mayor's recommendation will be placed on the agenda for the executive session of the next regular meeting of the Village Council. During the executive session, the employee will be given the opportunity to

respond to the allegations in the Notice of Intent to Discipline and offer explanations and/or present evidence and reasons supporting mitigation. No witnesses will be permitted to address the Council during executive session. This will not be an evidentiary hearing. The employee may have a representative present for the presentation to the Village Council. After hearing from the employee, the Council will excuse the employee and discuss the proposed termination. A vote will be taken during the public portion of the meeting.

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

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

H. Administrative Leave with Pay Pending Investigation and/or Disciplinary Proceeding

The Mayor or Clerk/Manager may authorize administrative leave with pay when an employee is ordered to leave the premises or work site pending an investigation, while disciplinary action is being contemplated, and/or pending issuance of the Notice of Final Action. Generally, this leave is authorized when the employee is disruptive or poses a threat of harm to himself/herself, others, or Village property. During this period, the employee continues to accrue benefits as if he/she were still on duty.

Employees on paid administrative leave shall be available in person and telephonically between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. Failure to comply or attend any scheduled meetings as directed by the employee's supervisor shall constitute an unauthorized leave without pay. Employees on paid

administrative leave shall not obtain other employment. The supervisor will document the administrative leave and include expectations of the employee while on leave, including but not limited to the return of Village equipment.

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

I. Grievance Procedure

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

- g. Position evaluation/audit, job evaluations, performance reviews, or selection for vacant positions.
- h. Denial or termination of self-employment / supplementary / outside employment.

J. Post-Discipline Appeal

A regular employee who has been suspended without pay, involuntarily demoted, or terminated may appeal his/her discipline to a neutral hearing officer.

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

5. **Pre-Hearing Conference.** The hearing officer shall schedule and conduct a pre-hearing conference by such method deemed appropriate. Each party shall submit a pre-hearing statement by the date set by the hearing officer, containing the following information:

- a. A statement of the issues;
- b. Proposed stipulations of fact;
- c. A list of witnesses to be called and a summary of their testimony;
- d. A list of exhibits;
- e. Requests for discovery;
- f. Requests for subpoenas; and
- g. Estimated amount of time needed for the hearing.

6. **Pre-Hearing Order.** The hearing officer shall issue a Pre-Hearing Order which shall contain:

- a. The issue(s) to be heard;
- b. Stipulations of fact;
- c. Deadline for disclosure of all witnesses and documentary evidence;
- d. Deadline for the close of all discovery;
- e. Deadline for filing pre-hearing motions and the manner in which they will be heard or acted upon;
- f. Deadline for filing proposed findings of fact and conclusions of law; and
- g. Hearing location and date, which may be continued only for good cause.

7. **Rules of Procedure for Hearing**

- a. All hearings shall be open to the public unless the parties mutually agree to the contrary.
- b. The hearing officer shall follow the evidentiary standards for administrative hearings.
- c. Either party may be represented at the hearing by a person of their choosing provided the representative has submitted a written entry of appearance prior to the hearing.
- d. The Village shall be entitled to have an employee representative in the hearing room during the course of the hearing.

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

8. Appeal Hearing Decision

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

employee shall file a sworn statement of gross earnings and unemployment compensation since the effective date of the disciplinary action. The Hearing Officer shall offset earnings and unemployment compensation received during the period against the back wages awarded. After a written decision is issued, the hearing officer shall retain jurisdiction of the case for the sole purpose Village contributed benefits.

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

SECTION 17. HOURLY/SALARY EMPLOYEES

All hourly Village employees are entitled to all the rights and benefits described in the Personnel Ordinance, except where specifically stated otherwise

Salaried employees are entitled to all the rights and benefits of hourly employees, except that they are terminable at will, with or without cause, have no recourse under the disciplinary or grievance procedure outlined in this Ordinance. Elected officials, members of board, commissioners and authorities who are not regular employees of the Village shall not be covered by the Personnel Ordinance. Salaried employees shall also be eligible to participate in the life and medical insurance benefits authorized for hourly employees. All temporary and seasonal employees, along with part-time employees shall be also be classified as at will, terminable with or without cause, having no recourse under the disciplinary or grievance procedure outlined in this Ordinance.

A. Exempt Employees

All employees are deemed to be non-exempt from the provisions of the federal Fair Labor Standards Act except those who are specifically designated as exempt, including:

- I. Village Clerk/Manager
- II. Deputy Clerk
- III. Finance Director

B. Temporary and Seasonal Employees

Temporary and seasonal employees are not entitled to any of the rights and benefits to which other employees may be entitled.

C. Elected Officials

Elected Officials shall have the option of participating in Village of Tijeras medical benefits.

SECTION 18. COMPUTER AND CELL PHONE USE

A. Cell Phones

Village employees who are issued a cell phone shall stay within allowed minutes and data. Any exceeded minutes or data shall be reimbursed by the employee to the Village. Personal use of Village cell phones while on Village time is prohibited.

Abuse of the cell phone policy may result in disciplinary action and/or termination.

B. Computers

Village employees who utilize Village computers should use the computers for Village business. Personal use of Village computers while on Village time is prohibited.

1. Village time shall be considered any time in which a public official is receiving wages paid by the Village.

Abuse of the computer use policy may result in disciplinary action and/or termination.