

**McKINLEY COUNTY PERSONNEL POLICIES
ORDINANCE NO., NOV-05-002**

**SECTION 1
TITLE & PURPOSE**

- 1.1 The following Ordinance is adopted pursuant to McKinley County's authority to implement a comprehensive Personnel Ordinance for all County Departments. In addition, this Ordinance is also adopted pursuant to the authority given McKinley County in Sections 4-41-6 and 4-41-7 N.M.S.A., 1978 Comp. as amended.
- 1.2 This Personnel Ordinance is applicable to all employees of McKinley County as hereinafter provided. A copy of this ordinance shall be maintained in each Department and shall be available to all employees during normal business hours. In addition, a copy of this Ordinance shall be given to employees and each new employee on or about their first day of work. Each employee shall sign for having received the Ordinance and be instructed to read the Ordinance.
- 1.3 This ordinance is not intended to address all personnel issues that may arise and is not a contract. The policies contained herein, and those policies necessary to implement the ordinance are a guide only. The County Manager with input from the Human Resources Director shall develop and implement such procedures as may be necessary to carry out the goals set forth in this Ordinance, and such other policies as set forth by the McKinley County Board of Commissioners.

**SECTION 2
GENERAL STATEMENT**

- 2.1 The County Manager and the Human Resources Director in accordance with this Ordinance shall administer the McKinley County personnel policies and regulations passed and enacted by the Board of County Commissioners.
- 2.2 The personnel policies of McKinley County shall be guided by the following principles.
 - 2.2.1 As an Affirmative Action and Equal Opportunity Employer, Employment actions in McKinley County shall be based upon merit and fitness, free from discrimination on the basis of race, color, national origin, political affiliation, religious faith or absence thereof, sex, sexual orientation of gender identity, age, handicap or disability, or status as a Veteran in accordance with applicable federal and state laws.
 - 2.2.2 As a tool to train employees to achieve high quality job performance.
 - 2.2.3 As a method of retaining employees on the basis of satisfactory job performance, to start correcting inadequate performance and to terminate employees where unsatisfactory performance cannot be corrected.
 - 2.2.4 To establish fair and equitable conditions of employment.

- 2.2.5 To establish a grievance procedure to be utilized by employees.
- 2.2.6 To assure fair and objective treatment of all job applicants and employees and ensure that employees are protected against coercion for partisan political reasons.

SECTION 3
SCOPE

- 3.1 All non-elected positions of the County are categorized as either classified or unclassified.
- 3.2 Unclassified position shall consist of the following: County Manager, Under-Sheriff, Sheriff's Appointed Assistant, Intermittent/Seasonal positions, Emergency positions, Temporary positions, and other positions as defined under the Fair Labor Standards Act Regulations, 29 CFR Part 541.
- 3.3 All employees holding full-time unclassified positions, unless otherwise provided herein, by State statute, or a written employment contract are subject to the provisions of this Ordinance governing leave, salary, holidays, and other conditions of employment. Employees in unclassified positions cannot appeal disciplinary actions, demotion or discharge actions.
- 3.4 Classified positions shall consist of all other positions in the County that are not specifically identified as unclassified, elected, or positions that are specifically excluded from the classified designation. Employees of holding classified position are subject to all provisions of the Ordinance.
- 3.5 Exclusion: Individuals holding the following positions are not employees of McKinley County and are expressly excluded from any consideration under the Ordinance: Elected Officials, Public Members of Boards or Committees, Volunteer Workers Consultants, and other persons performing work for the County under a separate, written professional services contract, and individuals participating in Special employment and Training Programs administered by Federal, State, or Tribal government.

SECTION 4
DEPARTMENTAL POLICIES/PROCEDURES

- 4.1 In addition to the provision of this Ordinance employees of a department may be additionally governed by their separate Policies and Procedures. Individual department policies, rules and regulations, procedures may be adopted and implemented by the various departments within the County, after review by the Human Resources Director, County Attorney and the County Manager to determine that such policies, rules, regulations and procedures are not in conflict with the intent and language of the Personnel Ordinance. In the event of conflict or misunderstanding, the Personnel Ordinance shall supersede individual departmental policies.

- 4.2 The Detention Center(s) and Sheriff's Department have the ability to draft SOP's (Standard Operating Procedures) that are specific to law enforcement agencies and establish a uniform code for all its employees.
- 4.3 Copies of current SOP's and Department Policies and Procedures shall be available in the Personnel Office.
- 4.4 Violation of the provisions set forth in this ordinance, Standard Operating Procedures and/or Department Policies and Procedures will result in disciplinary action as described.

**SECTION 5
PERSONNEL RECORDS**

- 5.1 The official personnel file shall be maintained in the Human Resources Department for each Employee working for the County. The Personnel File is the property of McKinley County. Employees may request in writing copies of information contained in their files.
- 5.2 Elected Officials and Division Directors may review their employees' file; however, the file may not leave the Human Resources Office. Supervisors may also request written approval from the Elected Official or Department Head to view the files of the employees they supervise. If an employee wishes someone other than those authorized to have access to those parts of the employee's file that are not open to the public as required by the Inspection of Public Records Act, that employee must give written authorization. This authorization must be given to Human Resources and state the name of the person or entity obtaining permission.
- 5.3 For benefits administration and emergency purposes, it is the employee's responsibility to notify his/her supervisor, payroll, and the Human Resources Department of any change in his/her home address, phone number, marital status, number and names of dependents, or other information required by the Human Resources Department to be able to maintain accurate and current personnel records.

**SECTION 6
COLLECTIVE BARGAINING AGREEMENTS**

- 6.1 The Provisions of this Ordinance apply to all employees not included in a collective bargaining agreement. This Ordinance shall apply to all matters not covered by a collective bargaining agreement.

SECTION 7
CONDITIONS OF EMPLOYMENT

- 7.1 Recruitment: Recruitment of employees shall be without regard to race, color, national origin, political affiliation, religious faith or absence thereof, sex, sexual orientation or gender identity, age, handicap or disability, or status as a veteran.
- 7.2 All appointments shall be in compliance with this Ordinance. All positions shall be established by the Board of County Commissioners. The salary shall fall within the minimum and maximum ranges established for each grade level.
- 7.3 All appointments to vacant, non-temporary positions, full-time or part-time are to be filled by a competitive process. The position can be advertised “in-house” or open to the public as determined by the appointing authority after consultation with Human Resources Director. For in-house advertisement, applications will only be accepted from current County employees not on probation. Any position open to the public shall be advertised at least once either in a newspaper of general circulation within McKinley County, on a website, or in such other publications as may be necessary to obtain candidates for the position. The Notice of Vacancy announcement shall contain information about the position and the application process. All job vacancy announcements shall be distributed for posting in each Office or Department of the County in order to notify employees of openings and provide instructions for internal applicants to apply.
- 7.4 Non-Competitive Appointments:
 - 7.4.1 Emergency Appointments: Emergency appointments of persons not already employed by McKinley County, not to exceed ninety (90) calendar days, shall be made with or without advertising when the County Manager determines such action is necessary to protect the public, to meet statutory deadlines, or to avoid untenable disruption or delay in service to the public. This appointment may be budgeted or non-budgeted depending on the emergency circumstances. Should the emergency of a budgeted appointment be expected to extend beyond ninety (90) calendar days, this period shall be used to advertise and fill the needed budgeted position by competitive procedures as provided in paragraph “7.3” of this Section. Emergency non-budgeted appointments can be extended if necessary; however, in no event can an emergency appointment extend beyond 180 calendar days. Any person hired under an emergency appointment shall not become tenured, except through the competitive provisions of Section 7.3.
 - 7.4.2 Temporary Appointments: Temporary appointments of persons not already employed by McKinley County shall be made with or without advertising when the County Manager and Human Resources Director determines such action is necessary. The position must be budgeted in the annual budget or a budget adjustment must be made prior to appointment. Any person hired under a temporary appointment shall meet the minimum qualifications for the position. Temporary Appointments shall not exceed nine (9) months in duration. Any person hired under a temporary appointment shall not become classified, except through the competitive provisions of Section 7.3.
 - 7.4.3 Transfers. Transfers may be made on a non-competitive basis within departments only with the approval of the Elected Official/Department Head as outlined in this Personnel Policy.

- 7.4.4 Application: Applications for employment shall be distributed and received by the Human Resources Department of McKinley County. Applications shall be accepted only for jobs for which vacancies exist and for which the County has issued a notice. All persons wishing to apply for employment with the County and all employees wishing to be considered for a vacant position must complete an approved Application for Employment form and must submit the form to the Human Resources Department before the position posting period closes. Applications received after the posting period closes shall not be accepted or considered. Applications of unsuccessful candidates shall be kept active for three months after the closing date of the announcement and will be considered should a similar position become available. Selections may be made from this group during the period the applications are active without further competition.
- 7.4.5 Qualification Determination: The Human Resources Director shall review applications for minimum qualifications set forth in the position description. Incomplete applications or those applications that do not meet the minimum qualifications shall not be forwarded to or considered by any appointing authority.
- 7.4.6 Selection:
- a. The Board of County Commissioners shall select and appoint the County Manager. The Board of County Commissioners hereby delegates the authority for hiring and selection process of other positions under their authority to the County Manager. The County Manager shall then delegate hiring authority to individual department heads.
 - b. The Board of County Commissioners approves funding for all positions in McKinley County, except those set by Statute.
 - c. Salaries are established at a minimum and maximum range for each pay grade. Except as set forth in this Ordinance, McKinley County shall not hire persons who do not meet the minimum qualifications set forth in the position description. Minimum qualifications are determined based solely upon the information given in the application.
- 7.4.7 Prohibitions and Sanctions: The Board of County Commissioners and Elected Officials shall not have the authority or power to fill any classified position, which has not been advertised under the provision of this Ordinance.
- 7.4.8 Ineligibility for Hire and Re-Hire: Any person who has been discharged for cause, or who has resigned in lieu of discharge for cause, shall be ineligible for employment.
- 7.4.9 Special Programs: McKinley County may participate in special employment and training programs administered by State, Federal or Tribal government, such as the Americor Vista and Youth Conservation Corps (YCC), Summer Youth Employment Program (SYEP), Joint Participation and Training Act (JTPA), Veterans Programs, etc. Such programs may be geared toward a specific class of applicants, such as disabled, low income, disadvantaged, etc., and therefore, the advertising and selection process may deviate from normal guidelines. Normally grant funded, these appointments are usually temporary. Upon completion of the specified program period, the appropriate appointing authority may appoint a participant holding a temporary appointment under special employment or training program to a probationary appointment in a vacant classified position without further competition, provided the participant meets the qualification requirements of the position.

SECTION 8 NEPOTISM

- 8.1 Nepotism Defined: The practice of showing favoritism toward relatives in both hiring and work related functions
- 8.2 Nepotism-Elected Officials: The Board of County Commissioners and other elected officials shall not hire relatives as defined herein and in accordance with state law.
- 8.3 Relationship to Board Members: For the purpose of applying this section, the following rules shall apply to employees under the hiring authority of the Board of Commissioners:
 - 8.3.1 A prohibited relative to any Board member shall be considered to be a prohibited relationship to the Board as whole.
 - 8.3.2 All positions under the hiring authority of the Board of County Commissioners as delegated to the County Manager herein, shall for nepotism, be considered to be under the supervision, management and control of the Board.
- 8.4 Relatives to other Elected Officials: For the purpose of applying this Section, employees under the hiring authority of the Probate Judge, Clerk, Assessor, Sheriff, and Treasurer, the following rule shall apply: All positions in a given office or its sub-offices or bureaus shall be considered under the supervision, management, and control of the Elected Official.
- 8.5 **An employee's relative shall not directly or indirectly supervise the employee. Therefore, Department Heads are not permitted to hire relatives, because this situation creates the potential for preferential treatment and discrimination toward other department employees.**
- 8.6 A relative for purposes of this Section is parent, child, spouse, sibling, grandparent, aunt, uncle, and of the employee's spouse.
- 8.7 Application to be Prospective Only: The application of this Section shall be prospective only, and shall not apply to any person now employed by McKinley County, and shall not apply in any instance wherein a change of incumbents in an election results in an employment relationship with an employee who was hired prior to the election.
- 8.8 Nepotism is Discouraged: It is unlawful and McKinley County discourages nepotism. Its practice has a tendency to create conflict and gives the appearance of discrimination between employees as outlined in its definition.

**SECTION 9
HARASSMENT/SEXUAL HARASSMENT POLICY**

- 9.1 Harassment, including sexual harassment, is prohibited by federal and state law. It is also a violation of McKinley County Policy for any supervisor or employee, male or female to engage in the acts or behavior as defined below:
- 9.2 Harassment: Verbal or physical conduct designed to threaten, intimidate or coerce. Also, verbal taunting, (including racial and ethnic slurs) which, in the employee’s opinion, impairs his/her ability to perform his/her job.
- 9.3 Sexual Harassment: Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when such conduct:
 - 9.3.1 Is made explicitly or implicitly a term or condition of employment.
 - 9.3.2 Is used as a basis for an employment decision.
 - 9.3.3 Interferes with an employee’s work performance or creates an otherwise offensive environment.
 - 9.3.4 Sexual Harassment does not refer to behavior or occasional compliments of a socially acceptable nature. It refers to behavior that is unwelcome, that is personally offensive, and that lowers moral and, therefore, interferes with work effectiveness. Sexual harassment may take many forms.
 - 9.3.5 Examples of Sexual Harassment:
 - a. Verbal: Sexual innuendoes, suggestive comments, jokes, of a sexual nature, sexual propositions, threats.
 - b. Non-verbal: Sexually suggestive objects or pictures, graphic commentaries (including E-mail pictures and suggestive messages), leering, whistling, obscene, gestures.
 - c. Physical: Unwanted physical contact, including touching, pinching, brushing the body, coerced sexual intercourse, assault.
- 9.4 Employees, elected officials, manager’s and all department heads will be expected to comply with this policy and take appropriate measures to ensure that such conduct does not occur. Appropriate disciplinary action will be taken against any employee who violates this policy in accordance with this personnel policy.

**SECTION 10
INTERNAL COMPLAINT PROCEDURES**

- 10.1 If any employee experiences any job-related harassment, sexual or otherwise, based on race, color, national origin, political affiliation, religious faith or absence thereof, sex, sexual orientation or gender identity, age, handicap or disability, or status as a Veteran or if they believe they have been treated in an unlawful, discriminatory manner, the matter should be **reported in writing**, to the Supervisor, Department Head and the Human Resources Director, who will promptly investigate the matter and take appropriate action, including reporting it in writing to the County Manager. Complaints should be filed as soon as possible and will be kept confidential to the maximum extent possible. A written report of

the investigation results will be prepared and forwarded to the County Manager with the investigator's recommendations as soon as possible. If the Human Resources Director determines that an employee has been discriminated against or harassed by another Employee, he/she shall recommend appropriate disciplinary action, up to and including dismissal, to the appropriate Elected Official or Department Head.

- 10.2 It is the policy of McKinley County to provide an atmosphere where employees may raise concerns or complaints without retaliation about matters, whether perceived or actual, made unlawful by Title VII of the Civil Rights Act and other law dealing with discrimination. Therefore, McKinley County prohibits any form of retaliation against any employee for filing or for assisting in the investigation of a complaint of harassment or discrimination. If the Human Resources Director determines that an employee has been retaliated against, he/she shall recommend appropriate disciplinary action, up to and including dismissal, to the appropriate Elected Official/Department Head.

SECTION 11 ETHICAL PRINCIPLES

- 11.1 County Government cannot function efficiently without the confidence of the public. The public's Confidence in the effectiveness, equity, and honesty of County Employees directly related to the ethical conduct of County Employees and Officials.
- 11.2 County employees and officials may not accept money or anything of value of more than twenty-five (\$25.00) dollars from anyone who is doing business with McKinley County, from anyone seeking to do business with McKinley County, or from anyone seeking favorable consideration, decisions or actions from any employee or official within McKinley County government.
- 11.3 Employees and officials are also prohibited from receiving any personal benefit that either diminishes the public's confidence in the effectiveness, equity, and honesty of County employees and officials, or that would diminish the public's confidence if disclosed.
- 11.4 Contracts involving public officers or employees.
- 11.4.1 McKinley County shall not enter into any contract other than an employment contract with a County officer or employee or with a business in which the public officer or employee has a substantial interest unless the public officer or employee has disclosed his substantial interest and unless the contract is awarded pursuant to the Procurement Code.
- 11.4.2 McKinley County shall not enter into a contract with, or take any action favorably, affecting, any person or business that is:
- a. represented personally in the matter by a person who has been a public officer or employee of the county within the preceding year if the contract is a direct result official act by the public officer or employee; or,
 - b. assisted in the transaction by a former County officer or employee whose official act, while in County employment, directly resulted in the County making that contract or taking that action.

**SECTION 12
SAFETY**

- 12.1 Every effort will be made to make workstations safe places to work. Each employee is expected to maintain his/her workstation in a neat and clean condition. All unsafe conditions and practices should be reported to the supervisor. The supervisor is to report any unsafe conditions or practices to the Safety Officer. All employees will follow the McKinley County Safety Manual. Said manual governs safety practices of McKinley County as approved by the McKinley County Commission.

**SECTION 13
DRUG FREE WORK PLACE**

- 13.1 The use and/or consumption of controlled substance, drugs or alcohol and prescribed or non-prescribed medications is a concern of McKinley County when it interferes with job performance, conduct, attendance, safety or when it is in violation of the law.
- 13.2 The unlawful manufacture, distribution, possession or use of a controlled substance by an employee while on County premises or while on County business is prohibited. Conducting County business, which includes driving vehicles or operating County equipment, while under the influence of alcohol or other drugs is also prohibited. Engaging in any of these activities may result in disciplinary action up to and including termination from employment as described in this Personnel Ordinance.
- 13.3 It is the employee's responsibility to notify their immediate supervisor in writing on any criminal drug arrest, alcohol related arrest, indictment information or conviction within five (5) calendar days. Failure to do so will result in disciplinary action.
- 13.4 The employee may be required to participate satisfactorily in a substance abuse assistance or rehabilitation program. The program for such purposes is to be approved by a Federal, State, local health, law enforcement, or other appropriate agency.
- 13.5 When the employee begins the program, he/she is required to sign a release form with the program representative for the purpose of releasing minimal information to the Human Resources Director, such as attendance and/or completion of the program.
- 13.6 It is the employee's responsibility to notify his/her supervisor of any prescribed drug(s), which may impair the ability to perform their job. Failure to do so will result in disciplinary action.

**SECTION 14
CLASSIFICATION/PAY PLAN**

- 14.1 All classified positions shall be grouped into classes and each class shall include those positions sufficiently similar in character, difficulty, and responsibility, so that:
 - 14.1.1 A similar level of education, experience, knowledge, ability, and other qualifications shall be required of incumbents; comparable tests of fitness may be used to select incumbents; and the same range of compensation will apply under substantially the same employment conditions.
 - 14.1.2 Written position descriptions shall be prepared for all positions. Such positions descriptions are intended to be descriptive and explanatory and are not restrictive. The use of particular expression or illustration as to duties, qualifications, or other attributes shall not be held to exclude others not mentioned or to limit the power of supervisors to alter the detailed tasks involved in the duties of the positions.
 - 14.1.3 The Classification Plan shall be subject to revision or amendment at any time by the Board of County Commissioners. The Plan shall also set forth rules for the hiring, promotion, and merit increases. The Classification Plan shall be adopted by resolution and is not incorporated into this Ordinance.

**SECTION 15
PROBATION AND TENURE**

- 15.1 Probationary Period: An employee initially appointed to a classified position shall serve a minimum probationary period of six months. A probationary period may be greater than six months if specifically set forth in the position description. Certain positions are subject to a minimum probationary period of one (1) year. These positions include, but are not limited to, law enforcement officer, detention officer, Emergency Medical Technician or emergency radio dispatcher positions. Probationary periods may not be waived and there will be no merit increase during the probationary period.
- 15.2 Probationary Status: The probationary employee is a non-classified employee who serves at the will of the employer and may be demoted or discharged at any time during the probationary period with or without cause or notice, and such demotion or discharge shall not be subject to review or appeal.
- 15.3 Tenured Status: Upon satisfactory completion of probation, an employee shall attain classified status, and may be demoted or discharged, or have his or her salary reduced only for cause as set forth in this Ordinance.
- 15.4 Promotion/Demotion or Transfer of Tenured Employees: Employees who are promoted, demoted or reassigned to another position are required to serve a six-month trial period for the new position. Such employees may be returned to their original position and pay at any time during the trial period, with or without cause or notice, and shall not be subject to review or appeal.

SECTION 16
TRANSFER & TRAINEE STAUS

- 16.1 The transfer of a classified employee from one classified position to another may be made when the employee meets the job qualification requirements, and:
- 16.1.1 The employee has requested the transfer and submitted an application for the position; or,
 - 16.1.2 The appropriate Elected Official/Department Head determines the transfer is necessary to promote the efficiency of operations. In such cases, the employee shall be transferred with a classified status and without a decrease in wages or salary.
 - 16.1.3 At the discretion of the Elected Official/Department Head, an employee may be transferred from one position to another on a merit/promotion/transfer basis without going through the competitive process. This process is permitted only when transfers are made within the department.
- 16.2 Appointments with trainee status (recruitment trainee program/plan) may be recommended by the Appointing Authority and approved by the Human Resources Director under the following conditions:
- 16.2.1 An attempt has been made to recruit fully qualified applicants; and,
 - 16.2.2 There are no applicants who meet all of the minimum qualifications, have a satisfactory employment history, possess the required knowledge, skills, and abilities, and are willing to accept the position for the salary offered; and,
 - 16.2.3 The appointee meets some of the minimum qualifications established for the position; and,
 - 16.2.4 A program/plan is developed in writing. The program/plan shall set forth those duties that the employee is not qualified to perform and a schedule of training and practice is established. A trainee shall not be held to all performance standards until certification is achieved as described below:
 - a. The selected candidate will be required to meet the minimum qualifications within six (6) months of being appointed. In the event that the selected candidate does not meet all qualifications due to circumstances beyond his/her control, the Appointing Authority may request an extension of this period for up to an additional three (3) months. The request must be made by the Appointing Authority to the Human Resources Director in writing.
 - b. The selected candidate will not attain tenure and will be an at-will probationary employee until all minimum qualifications have been met including any extensions.
 - c. The selected candidate will be placed at a rate of pay below the rate they would otherwise have been assigned. They may be advanced to the appropriate pay rate upon the recommendation of the Appointing Authority and the certification of the Human Resources Director that they have met the minimum qualifications.
- 16.3 Employees on trainee status are ineligible for merit increases. Their anniversary date shall be established as the date they were certified as having met the minimum qualifications for their position. The probationary period for tenure shall be served from the time of certification.

SECTION 17
PAY & COMPENSATION

- 17.1 Pay or Compensation Plan: The pay or compensation plan includes the basic salary schedule adopted by the Board of Commissioners and shall include the assignment of levels or ranges or rates. The pay or compensation plan shall include rules for promotion, merit increases and hiring. The pay or compensation plan shall be subject to revision or amendment at any time by the Board of Commissioners. The pay or compensation plan shall be adopted by resolution and is not incorporated into this Ordinance.
- 17.2 Assigned Salaries under the pay plan are subject to the availability of funds as determined by the Board of Commissioners.
- 17.3 Pay ranges are intended to furnish administrative flexibility in recognizing individual differences among positions and in providing employee incentive for growth and improved performance.
- 17.4 The Fair Labor Standards Act (FLSA) sets minimum wage, overtime pay, equal pay, record keeping, and child labor standards for employees who are covered by the act.
- 17.5 For purposes of applying and calculating overtime -- the Fair Labor Standards Act defines "Salaried Exempt" and "Nonexempt." A salaried exempt employee is a person who is salaried rather than an hourly waged worker. A nonexempt employee is subject to the minimum wage provisions and overtime provisions of the Fair Labor Standards Act and may not work overtime without prior written approval. The following positions are considered exempt from the overtime provisions of the FLSA: County Manager, County Attorney, Finance Director, Human Resources Director, Road Superintendent, DWI Director, Fire Services Director, and any other position that may be designation on the position description.
- 17.6 Pay for employees shall be set at a rate within the pay range established for the position in accordance with the pay or compensation plan and any rules therein approved by the Board of Commissioners.
- 17.7 Public Employee's Retirement Association: The employer's contributions are paid by McKinley County. The employee's contribution shall be made by payroll deduction. Mandatory participation and contributions may vary as required or allowed by law.
- 17.8 Withholding: Deductions required by law shall be withheld from gross pay.
- 17.9 Payment for Accrued Annual Leave at Separation: An eligible employee shall receive payment for accrued annual leave not in excess of 120 hours, computed at the average regular hourly rate existing immediately prior to separation. Payment for accrued leave shall be made at the same time as final payment of salary or wage, and shall be subject to all

lawful withholding. An eligible employee for purposes of this paragraph shall be an employee who has completed an initial probationary period with the County. An employee will become ineligible to receive payment under this paragraph for criminal acts committed, which are directly related to their job duties.

- 17.10 Overtime is actual hours permitted or suffered to be worked by the supervisor in excess of the hours required in a workweek or in a designated work period. Overtime work is subject to the prior written approval of the hiring authority unless conditions make this impractical or impossible. Overtime will be calculated in accordance with the Fair Labor Standards Act.
- 17.11 Overtime in a Work Week or Designated Work Period: Non-exempt employees shall receive overtime pay for time actually worked in excess of forty hours in a work week (as defined in this Personnel Ordinance) or in excess of the prescribed number of hours in a designated work period (29 U.S.C. 7 (k) or Section 13 (b)(20) of the Fair Labor Standards Act as amended), at a rate of one and one-half times the employee's regular rate of pay. Actual time worked does not include time off from work on any paid leave or Holiday. Employees may not take paid leave and earn paid overtime in the same workweek or designated work period. (Exception: Law Enforcement Grant Overtime is paid for all hours of work performed under a grant in excess of the hours of work or leave required in a designated pay period. Law Enforcement Grant Overtime is defined as an overtime payment made at 1.5 times the employee's regular hourly rate of pay for overtime work that is reimbursed to the County under a State or Federal grant.)
- 17.12 Payment of earned compensatory time: All compensatory time earned prior to this Ordinance, shall be carried forward. Employees having compensatory time should schedule and take the time off within six (6) months of adoption of this Ordinance. In any event, all compensatory time remaining on July 1st 2006, shall be cleared.
- 17.13 Supervisory mandate: An Employee may only earn overtime when specifically instructed to work more than the required number of hours in a work week or work period. The supervisor shall normally give written instructions prior to the overtime being performed. Employees who work overtime when not specifically instructed may be subject to disciplinary action.
- 17.14 Holiday Pay: Employees other than part-time, intermittent and temporary employees shall receive paid time-off for designated Holidays at the employee's regular hourly rate. For essential personnel, see Section 19.2.
- 17.15 Payment of Accrued Sick Leave at Retirement: Immediately prior to an employee's entry into retirement under P.E.R.A., accrued sick leave, not to exceed a maximum of 520 hours shall be paid in lump sum. Accrued sick leave that is paid in lump sum at retirement shall be made at the same time as final payment of salary, and shall be subject to all lawful deductions. Payment for accrued sick leave shall be paid at the employee's regular hourly rate immediately prior to retirement less any pay additives or differentials.

- 17.16 Payment of Wages: Wages shall be paid by check, warrant or direct deposit, not to exceed one week in arrears, on a specific day of the week set by the Board of Commissioners. Employees, who resign or retire, will be paid on the next regularly scheduled pay day. Employees who are discharged shall be paid within five (5) calendar days of the date of discharge.
- 17.17 Severance pay shall normally not be paid except under the terms of a negotiated employment contract or approved settlement agreement, or in the event of a reduction in force or layoff.

SECTION 18 HOURS OF WORK

- 18.1 Workweek: The regular administrative workweek shall consist of seven consecutive calendar days beginning Sundays at 12:00 a.m. and ending Saturdays at 11:59 p.m.
- 18.2 Regular Workdays: Regular workdays shall be Monday, Tuesday, Wednesday, Thursday, and Friday.
- 18.3 Regular Work Hours: Regular work hours shall be 8:00 a.m. to 5:00 p.m., with a one Hour lunch period. The lunch hour shall be employee's time to be spent, as the employee desires away from their workstation and the employee shall not receive pay or compensation for that time. The time for taking lunch shall be designated for each employee by the Supervisor or Elected Official.
- 18.4 Exceptions:
- 18.4.1 Sections 18.2 and 18.3 shall not apply upon adoption of alternate work schedules. Alternate work schedules shall provide for a forty-hour minimum workweek for all full-time employees and shall be specifically approved by the Board of Commissioners at an open meeting prior to implementation.
- 18.4.2 Sections 18.1, 18.2, and 18.3 shall not apply to law enforcement personnel, or fire protection/Emergency Medical Services personnel, in accordance with Section 7(k) or Section 13 (b) (20) of the Fair Labor Standards Act, as amended.

SECTION 19 EMPLOYEE BENEFITS & SERVICES

- 19.1 Paid Leave: Various types of paid leave are available to employees in classified service positions and unclassified service positions other than intermittent and temporary employees. Intermittent and temporary employees, and part-time employees appointed to positions which are specifically designated and budgeted to work less than 20 hours per week, do not earn and are not entitled to any form of paid leave. All requests for paid leave must be documented on a form provided for that purpose and approved by the appropriate authority.

- 19.2 Holiday Premium pay: Eligible employees for Holiday Premium pay are those employees who are considered essential personnel from the Sheriff's Office, Juvenile Detention Center, Adult Detention Center, Ambulance employees, and Metro Dispatch Center. Employees who are required to work on a Holiday but not more than forty (40) hours in a work week (or not more than the number of hours in a designated work period) shall earn extra pay on an hour for hour basis. Overtime provisions apply to any hours actually worked that exceed forty (40) hours in an administrative work week or in a specified number of hours in a designated work period. Eligible employees who actually work on Thanksgiving Day and Christmas Day (December 25th) shall receive premium pay at time and one-half. Employees who are on leave without pay on the workday immediately prior to the designated Holiday are not eligible for Holiday Premium pay.
- 19.3 Annual Leave: McKinley County recognizes the importance of vacation time in providing the opportunity for rest, recreation, and personal activities. Eligible employees, as described in this personnel ordinance, shall accrue annual leave. Accrued annual leave may be taken at any time during the year. Annual leave must be requested and approved by the appropriate authority in advance, except in cases of emergency. Each Elected Official or Department Head shall determine appropriate time limits and procedures for requesting and approving emergency annual leave. In addition, each Elected Official or Department Head may develop a vacation schedule at the beginning of each calendar year. Such schedule shall be flexible enough to accommodate changes in work operations or employee situations. No payments for accrued annual leave will be made in lieu of taking annual leave, except at separation of employment. Annual leave accrual rates are:
- 19.3.1 Less than three year's employment with McKinley County: four hours per pay period.
 - 19.3.2 Three years to five years employment with McKinley County: five hours per pay period.
 - 19.3.3 More than five year's employment with McKinley County. Six hours per paid period.
 - 19.3.4 Years of service as an Elected Official shall count toward employment with McKinley County for the purposes of computing calculating accrual of annual leave. Persons previously employed or holding office with McKinley County shall be entitled to have previous County service counted for the purposes of calculating leave.
- 19.4 An employee may not accrue in excess of 240 hours annual leave at any time. Annual leave in excess of 240 hours at 12:00 midnight on Saturday of each pay period shall be forfeited. It is the employee's responsibility to schedule leave well in advance of the date at which it shall be forfeited. Not with standing this section, the Sheriff Deputies accrual of annual leave shall not exceed 300 hours.
- 19.5 Payment for accrued annual leave at separation of employment: Payment shall be made for accrued annual leave, not to exceed 120 hours, at separation of employment, in accordance with provision set forth in this Personnel Ordinance.

**SECTION 20
SICK LEAVE**

- 20.1 Eligible employees, as described in this Personnel Ordinance, shall accrue sick leave at the rate of four hours per pay period. Sick leave shall be accrued on a prorated basis when an employee is paid less than 80 hours in a pay period. Leave will accrue based on the percentage of an 80-hour pay period paid.
- 20.2 Sick Leave: May be used for personal illness, pregnancy, or confinement, injury, illness, medical treatment, or for attendance upon the injury, illness or medical treatment of the spouse parent, child, of the employee, or parent or child of the spouse of the employee. All sick leave must be requested and approved by the employee’s supervisor prior to or at the beginning of the first work day and, each successive work day the employee is absent, except when the employee has submitted a statement from a medical provider which justifies the absence and identifies the duration of the absence.
- 20.3 Medical Justification Required: Sick leave in excess of three (3) consecutive workdays requires a statement from a medical provider justifying the absence. If appropriate, the supervisor shall issue a notification to the employee that the leave is being counted towards the employee’s FMLA entitlement. In addition, a supervisor may request that the employee provide a statement from a medical provider for future absences when the employee has used sick leave three or more times within the preceding 30 days.
- 20.4 Payment or Conversion of Sick Leave at Retirement: Payment of sick leave at retirement shall be made in accordance with provisions set forth in this Personnel Ordinance at Section 17.15.
- 20.5 Abuse of Sick Leave: Repeated use of sick leave before or after a scheduled day off, or other similar patterns of sick leave use may subject an employee to disciplinary action.

**SECTION 21
OTHER TYPES OF LEAVE**

- 21.1 Family and Medical Leave: Family and Medical Leave will be administered in accordance with Public Law 103-3, the Family and Medical Leave Act of 1993, as amended, and the policies stated herein; separate administrative directives will set procedural requirement.
- 21.2 Family and medical leave will consist of appropriate accrued paid leave and unpaid leave for a period not to exceed twelve (12) weeks during any twelve (12) month period measured backward from the date the employee uses family and medical leave. Family and medical leave may be taken intermittently or consecutively.
- 21.3 Employees eligible for family and medical leave are those who have been employed by McKinley County for at least 12 months, **and** who have provided at least 1,250 hours of services during the 12 months before leave is requested.

- 21.4 Family and medical leave may be used to care for the employee's child after birth, or placement for adoption or foster care; to care for the employee's spouse, son daughter, mother or father who has a serious health condition or for the employee's own serious health condition that renders the employee unable to perform his or her job. Medical certification is required.
- 21.5 During a period of unpaid family and medical leave, an employee will be retained on McKinley County's group health insurance plan under the same conditions that applied before unpaid leave commenced. To continue health coverage, the employee must continue to make any contributions that he or she made to the plan before taking unpaid leave.
- 21.6 An employee granted family and medical leave, will be restored to his or her previous position or to a position with equivalent pay, benefits, and other terms and conditions of employment, or as required by the Family and Medical Leave Act. McKinley County will determine whether or not a position is an "equivalent position".
- 21.7 Emergency Leave: An employee, other than a part-time, intermittent or temporary employee, shall be granted up to twenty-four (24) hours emergency leave for the death of the employee's parent, sibling, child, spouse, mother-in-law, father-in-law, sister-in-law, brother-in-law, grandparent, or grandchild. The supervisor may require documentation before approving leave.
- 21.8 Leave Without Pay: Leave without pay may be granted at the discretion of a Supervisor or Elected Official when the circumstances and the interests of the County so indicate; provided, that the duration of leave without pay shall not in any event exceed 1040 hours duration. The Elected Official or Supervisor must take into consideration the workload of others including possible overtime needed while an employee is on leave without pay; the time off required not to exceed 1040 hours; and, other factors related to job duties and the business of the department. Leave without pay shall be used only when all other appropriate leave has been exhausted. McKinley County shall not pay or contribute to or maintain group health insurance, except for as provided in Sections 21.1 through 21.6. P.E.R.A. or any other retirement or benefit program of the employee while the employee is on leave without pay for reasons other than FMLA Leave or Worker's compensation. Otherwise, the employee may make both the employee and county's contributions to keep those programs in effect while the employee is on leave without pay.
- 21.9 Administrative Leave with Pay: Employees in classified service positions and unclassified service positions other than intermittent/seasonal and temporary employees are eligible for administrative leave with pay under the following conditions (21.10 - 21.15). Intermittent/seasonal and temporary employees are eligible for leave without pay during the following conditions (21.10 – 21-15):

- 21.10 Administrative Leave for Investigations: An Elected Official/Department Head, in the best interests of the County, may grant administrative leave with pay for an indefinite period, not to exceed 160 hours, for the following reasons:
- a. To remove an employee from his or her position to facilitate an investigation into the employee's conduct. The investigation must begin within three (3) workdays of placing employee on administrative leave with pay.
 - b. To remove an employee from his/ her special-risk position when disciplinary action is required and the employee cannot be placed in a non-special risk position during the required notice period.
 - c. To allow an employee to participate in an employee assistance program, counseling, or a drug or alcohol rehabilitation program. In such cases, the employee may not be placed on paid administrative leave for more than 40 hours.
 - d. The Board of Commissioners, upon presentation of substantial evidence justifying the same, may extend administrative leave with pay.
- 21.11 Voting Leave: On election day, any employee scheduled to work during the time of opening and the time of closing of the polls, shall be granted paid time off to vote, not to exceed two hours. This does not apply to any employee whose workday begins more than two hours after the time of opening of polls or ends more than three hours prior to the time of closing the polls. The scheduling of this leave shall be subject to the control of the supervisor. The supervisor may not designate the lunch period or other period outside the employee's normal work hours. Voting leave is available upon request only to eligible registered voters, and the employer may verify that the employee did vote. Voting leave may not be used for any other purpose, and misuse of voting leave may subject the employee to disciplinary action.
- 21.12 Jury Duty and Court Attendance: Employees will be granted court leave for the purpose of serving as juror or witness under subpoena in federal court, state court, or the court of any political subdivision within the State. Court leave with pay will be authorized only during those days, which would otherwise have been an employee's regularly scheduled working day. If excused by the court during a workday, the employee is expected to return to duty if transportation is available and if at least one hour of County duty can be served in the workday. If the employee does not return to work, the balance of the day will be charged to annual leave, or leave without pay. The benefits of this section shall not extend to any person with an interest in the outcome of the proceedings including Reserve Deputies. Employed Deputies under a subpoena to testify as a witness shall be paid for the attendance in Court on their scheduled day off, reasonable travel included.
- 21.13 On-the-Job Injury Leave: Any employee injured on the job and subject to the New Mexico Worker's Compensation Act shall receive his/her regular salary and benefits for a period not to exceed seven (7) calendar days or 56 hours. If the leave extends beyond 30 days, employees will be required to reimburse the County for the portion of the first 56 hours paid for by Worker's Compensation. If the employee's claim shall be found to be invalid, the time paid as on-the-job injury leave will be charged to accrued sick leave, or annual leave.

21.14 Short Term Disability: Any employee injured off the job may be eligible for Short Term Disability. The injury must be severe enough to render the employee incapable of performing essential duties. The maximum time allowable for short-term disability is twenty-six weeks.

21.15 Military Leave:

21.15.1 Employees called to National Guard or Reserve training shall be granted up to fifteen (15) workdays' leave with pay annually. Accrued annual leave may be used when the period of training exceeds fifteen (15) workdays. Employees seeking paid time off work for training must submit their military orders in advance of training.

21.15.2 In accordance with the requirements of the Uniformed Services Employment and Reemployment Rights Act (USERRA) (P.L. 103-353, 108 Stat. 3149; 38 USC §43) employees who perform duty, voluntarily or involuntarily, in the "uniformed services" shall be granted leave without pay for up to five years. These services include the Army, Navy, Marine Corps, Air Force, Coast Guard, and Public Health Service Commissioned Corps, as well as the reserve components of each of these services. Federal training or service in the Army National Guard and Air National Guard also gives rise to rights under USERRA. Uniformed service includes active duty, active duty for training, inactive duty training (such as drills), and initial active duty training, as well as the period for which a person is absent from a position of employment for the purpose of an examination to determine fitness to perform any such duty. USERRA covers all employees except those serving in positions where there is no reasonable expectation that employment will continue indefinitely or for a significant period. USERRA also specifies that pension benefits and health insurance to be maintained for specific periods of time.

SECTION 22

CLOSING FACILITIES

UNDER EMERGENCY CONDITIONS

22.1 By order of the Board of Commissioners: When the Board of Commissioners approves an emergency facility closure, Elected Officials and the County Manager shall have the responsibility for determining those employees necessary for providing essential services. Other employees assigned to facilities that have been closed by the Board shall be released from duty and granted administrative leave for the period the facility is closed. Employees who are required by the Elected Official or County Manager to remain on duty (at the closed facility) to provide essential services shall be granted extra pay for the hours worked during the period the facility is closed and the other employees will be granted administrative leave.

22.2 An employee who is on a prior approved leave of absence or scheduled Holiday during an emergency shall not have the leave of absence changed to administrative leave. (This applies to any County Administrative Leave granted by the Board of County Commissioners.

22.3 In some instances, the employees from closed facilities may be assigned alternate workstations. In such instances, the use of administrative leave will not apply.

22.4 In the event that it is not possible to schedule a vote by the Board of Commissioners, Elected Officials and the County Manager may, at their discretion, close a facility. In such instances, the Chairman of the Board of Commissioners shall be contacted and advised of the closing. The Board of Commissioners shall then ratify or disapprove the use of administrative leave for facility closure at the next scheduled meeting.

SECTION 23 EMPLOYEE BENEFIT PROGRAM

- 23.1 Insurance: Life, Health, and other insurance plans are available through Group insurance plans sponsored by McKinley County. The requirements for employee participation, the extent of cost participation by McKinley County, coverage terms, and availability of continuation of coverage will vary from time to time according to the contracts entered into. Employees will be notified of benefits available and/or any changes as they occur. Employee participation is defined by a group insurance contract entered into by McKinley County. On-the-job injuries and work-related illnesses will generally be covered by workers' compensation.
- 23.2 Retirement: McKinley County is subject to the provision of the laws of the State of New Mexico concerning participation in the state program for public employee retirement and disability. Participation is mandatory, except as expressly allowed by State law. The extent the relative amount of participation of McKinley County and its employees may, within the provision of State law, vary from time to time. Benefits shall be those payable under state law, and where discretionary, those enacted by the Board of Commissioners.
- 23.3 Education Assistance: The County will provided educational assistance benefits to help full-time classified employees pay for the cost of education and training courses, subject to the availability of funds, in accordance with the guidelines established in Standard Operating Procedures. The County provides this benefit with the understanding that the County will receive benefit from the training. The Standard Operating Procedures should contain pro-rated schedule to justify the expense of training.
- 23.4 Physicals: For certain positions in high risk the County may provide a "high risk" physical. Any employee required to take such physicals will cooperate with the schedule and any follow-up schedules with the designated health care provider. Guidelines will be established in a Standard Operating Procedure. The Standard Operating Procedure should contain pro-rated schedule to justify the expense of the physical.

SECTION 24 STANDARDS OF CONDUCT AND DISCIPLINE

- 24.1 Authority: The authority to discharge or discipline shall be vested in the County Manager or Elected Official for employees under their appointing authority. Authority to discipline may be delegated to Department Heads and subordinate supervisors at the discretion of the County Manager or the Elected Official for employees within their respective offices.

- 24.2 Scope: This section applies to tenured employees in classified positions
- 24.3 Prohibitions: No disciplinary or other adverse actions may be taken against employees in retaliation for their filing a grievance, appeal or complaint, or for their testifying or officially assisting in the investigation of grievances, appeals or complaints, or for their refusing to perform an unlawful act.
- 24.4 General Standards of Conduct: McKinley County requires all employees to familiarize themselves with all rules and regulations pertaining to their positions and duties, and that employees abide by these rules and regulations. The following rules of conduct and performance standards are applicable both on and off the job to all McKinley County employees.
- 24.4.1 Each employee shall make an immediate report to his or her immediate supervisor of any violation of the law or the rules and regulations of the County of which he has knowledge. Such report may be required in writing at the discretion of the receiving supervisor.
- 24.4.2 Each employee shall make a written report within three (3) working days to the Elected Official or Department Head of any criminal charge filed against him/her or any arrest for any violation of any law or ordinance except minor traffic violations. (DUI is not a minor traffic offense.)
- 24.4.3 Each employee shall keep himself/herself fit, mentally alert, and shall perform his/her duties fairly and impartially, and otherwise conduct him/herself both on-duty and off-duty so as to command the respect of fellow employees and the general public. Each employee's conduct shall be at all times consistent with the goals and mission of McKinley County.
- 24.4.4 No employee shall refuse to truthfully answer questions specifically relating to the performance of his/her official duties.
- 24.4.5 No employee shall report for duty while under the influence of a narcotic, barbiturate, hallucinogenic drug, central nervous system stimulant, alcohol, or an intoxicant. In the event any of the foregoing drugs is prescribed and administered to an employee, the employee shall report this to the supervisor. The supervisor shall then make a determination whether the employee can perform his duties without detrimental effect. An employee may be asked to submit to a drug and/or alcohol test when the supervisor has reason to suspect that the employee is under the influence of illegal drugs or alcohol.
- 24.4.6 No employee shall be insubordinate, neglectful, or unwilling to follow orders or perform officially designated duties.
- 24.4.7 No employee shall falsify reports or records or knowingly submit inaccurate or untruthful information for or on any McKinley County record, report or document.
- 24.4.8 No employee shall sleep or "rest" on duty unless specifically authorized to do so (i.e. E.M.T.s on extended shifts).
- 24.4.9 Violence, fighting, horseplay, and threatening or interfering with visitors or other employee at any time on County premises or at any other place, while on duty, will not be tolerated. McKinley County strictly prohibits sexual harassment or other forms of discrimination.

- 24.4.10 Gambling of any kind on McKinley County premises or at any other place, while on duty will not be tolerated.
- 24.4.11 Employees shall not reveal confidential information in McKinley County records to unauthorized persons.
- 24.4.12 Employees shall not be tardy, absent, or depart from work early without the permission of their supervisors and shall observe time limitations on rest and meal periods. Each employee shall notify his immediate supervisor or designated representative prior to his scheduled work shift in the event he or she expects to be absent from duty due to illness or other reason.
- 24.4.13 No employee shall solicit funds or services, sell tickets, distribute petitions or literature for any purpose other than official business or approved County functions on McKinley County property or at any other place while on duty except that an employee may engage in such activities on McKinley County property when off-duty (before or after work, while on lunch hour or during breaks) provided advance permission is obtained from the employee's supervisor. The supervisor shall give such permission, if such solicitation is legal, if no employee is approached with a solicitation while on duty, and if such solicitations are conducted courteously without pressuring employees to participate or disrupting the work of others.
- 24.4.14 Every employee will comply with safety rules/regulations and shall report promptly to the appropriate supervisor any injury or illness.
- 24.4.15 Employees shall not use McKinley County property, materials or facilities for non-County business. No employee shall occupy, use or operate any McKinley County property or facility without prior authorization.
- 24.4.16 Every employee has the responsibility to protect and safeguard McKinley County property and the person and property of others. No employee shall be in unauthorized possession of any property of McKinley County or others regardless of value, or attempt to remove such property from the McKinley County premises.
- 24.4.17 Possessions of firearms or other weapons except by sworn law enforcement officers on McKinley County property, or at any other place while on duty are prohibited. Small pocketknives or tools required in the performance of normal job duties are not considered weapons.

SECTION 25

TYPES OF DISCIPLINARY ACTION

- 25.1 Basis for Employee Discipline: Disciplinary action shall be based on just cause in order to promote the efficiency of the services rendered by McKinley County in the operation of its respective offices. Disciplinary actions shall be consistent with governing laws and regulations. Actions shall be taken within a reasonable time. Actions shall be taken without regard to race, color, national origin, political affiliation, religious faith or absence thereof, sex, sexual orientation or gender, age, handicap or disability, or status as a veteran.

- 25.2 **Disciplinary actions are determined by considering both the severity and frequency of the offense. That is, more severe discipline may be taken based on previous violations of the same requirement or based on previous or coincident violations of other requirements. Also, in determining the appropriate disciplinary action to take, the nature and severity of the offense will also be considered.** Progressive discipline will be used as circumstances merit and based on this section.
- 25.3 The Elected Official or Department Head as set forth in this personnel policy may take disciplinary actions. Disciplinary action shall be taken only after the occurrence of disciplinary offenses. All disciplinary actions that propose suspension, demotion, transfer or termination shall first be reviewed by the Human Resources Director to verify that there is just cause and documentation for the proposed action and that due process is observed. Supervisors, Department Heads and Elected Officials may use a form supplied by Human Resources for Disciplinary actions. Whether or not forms are used; each type of action must be properly documented with narrative descriptions of the offense(s).
- 25.4. Written Warning (non-appealable Section 26.6): A written warning is issued for less serious infractions (See Section 25.8.1). The supervisor shall notify the employee in writing that the employee's performance or behavior must be improved. The supervisor defines the areas to improve, outlines the goals leading to improvement and informs the employee that failure to improve will result in a more serious disciplinary action including and up to termination. The supervisor is responsible for documenting the written warning, providing the employee with the original, obtaining the employee's signature (or indicating it was refused) as acknowledgement of receipt, and forwarding the acknowledgement copy to the Human Resources Director to be placed in the employee's personnel file. After one (1) year, a written warning will not be considered for the purpose of cumulative or progressive discipline, and may not be considered as a factor in promotion or merit salary increases.
- 25.5 Reprimand (non-appealable Section 26.6): A reprimand is issued when the performance deficiency or infraction is of a more serious nature than for which a written warning is appropriate or when a written warning was not effective. (See, Section 25.8.1). The reprimand should state specifically what happened and when it happened. It should also, list the specific offense, describe any mitigating circumstances; and, include corrective measures that employee should take. The supervisor is responsible for documenting the reprimand in writing, providing the employee with the original, obtaining the employee's signature (or indicating it was refused) as acknowledgement of receipt, and forwarding the acknowledgement copy to the Human Resources Director to be placed in the employee's personnel file. The reprimand should also inform the employee that the supervisor will be available to discuss the matter further and that any response will be documented and filed in the employee's official personnel file. Failure to improve will result in a more serious disciplinary action including and up to termination.
- 25.6 Suspension, Demotion, or Discharge: These actions require that the employee be given the opportunity for attending a pre-determination hearing. These actions will be prepared in consultation with the Human Resources Director and/or the County Attorney. The employee **must** be provided notice of the **proposed action**. The proposed action notice

should contain an explanation of the evidence used to support the action and suggested time and date for the pre-determination hearing. The suggested time and date should be at least two (2) days after the proposal notice has been delivered. If the suggested time is inconvenient, the employee and supervisor shall agree on an appropriate time and date, but in no event (except on a showing of extreme hardship) shall the pre-determination hearing be held beyond five (5) days after the notice has been delivered.

25.6.1 The employee may give a written response and/or attend the pre-determination hearing. If the response is verbal (during the pre-determination hearing) written documentation of the hearing is required and both the supervisor and employee are required to acknowledge same.

25.6.2 The Supervisor, Department Head and/or Elected Official **must** give due consideration to any response in the deliberation of a final decision. The Supervisor, Department Head and/or Elected Official has a reasonable period of time to issue a formal written notice of decision. The notice of decision must clearly indicate the charges relied upon for the action, explain how the employee's action affected the County, how the employee is expected to correct performance or behavior (unless the action is a dismissal), reflect the specific penalty imposed and effective date or dates for the penalty. The notice of decision must include the employee's right to appeal within five (5) working days from receipt of such notice, unless an extension is requested and granted; and, explain the employee's right to be represented by a person of his/her choosing and include specific appeal procedures. See, Section 26 Disciplinary Appeals Process.

25.6.3 The supervisor is responsible for providing the employee with the original notices and obtaining the employee's signature as acknowledgment of receipt (or indicating it was refused). The acknowledged copies of the notice of proposed action, notice of decision and documentation of any employee response shall be filed in the employee's official personnel file.

25.7 Administrative Leave with Pay: In cases where County employees, residents, property or the efficient running of County operations are at risk because of an employee's action, the employee's supervisor shall put the employee on administrative leave as set forth in this personnel ordinance.

25.8 Range and Severity of Offenses: The following is a guide to assist management in taking action. Considerations of the nature and severity of the offense may result in more or less severe action than those recommended.

25.8.1 Examples of offenses that will generally result in a Written Warning or Reprimand for a first occurrence include but are not limited to:

- Gambling
- Horseplay or Fighting
- Loafing
- Tardiness
- Absenteeism
- Use of Profane, Abusive or Threatening Language
- Absence Without Authorized Leave
- Unauthorized Distribution of Written or Printed Material

- Unauthorized Solicitations or Sales on County Premises While on duty
- Substandard Quality and/or Quantity of Work
- Reporting to Work Improperly Dressed for Job Assignment or unprepared to begin work
- Failure to Follow Oral or Written Instructions
- Failure to Follow the Chain of Command
- Failure to follow safety procedures
- Violation of County Smoking Policy
- Malingering
- Conduct by the employee or by the family or intimates of an employee which disturbs, disrupts, or interferes with the normal work or functions of an office/department

25.8.2 Examples of offenses that will generally result in a Suspension, Transfer, or Demotion for a first occurrence include but are not limited to:

- Sleeping on the Job
- Violation of written or statutory policies, procedures or directives
- Incompetence in the performance of assigned duties
- Revealing Confidential Information to unauthorized persons
- Unlawful manufacture, sale, distribution, dispensing, possession or use of a controlled substances or alcohol on County premises, while **driving, operating** or **riding** as a passenger in County owned or leased vehicles or equipment, and/or while otherwise in an official duty status whether on or off County premises
- Possession of firearms or other weapons except by sworn law enforcement officers on McKinley County property, or at any other place while on duty. (Small pocketknives or tools required in the performance of normal job duties are not considered weapons.)
- Reporting to Work under the Influence of a controlled substance or alcohol
- Leaving the Assigned Work Station without Authorization
- Falsification of Forms or Records
- Stealing County property or property of a visitor or employee
- Willful Violation of Rules, Regulations, Directives or Policy Statements
- Unauthorized Use of County Equipment or Property
- Insubordination
- Destruction or Abuse of County Property or Equipment
- Destruction of Evidence or Giving False Testimony
- Careless or Unsafe Handling of Firearms or Other Weapons
- Failure to Report and Turn in Without Delay all Property Found, Seized, or Taken Officially

- Conviction of a misdemeanor, or commission of any act, whether it results in a conviction or not, which would constitute a misdemeanor under the laws of the State of New Mexico and that is related to one's job
- Voluntary conduct on or off the job which tends to bring the employee of the County or the employee's office or supervisor into disrepute or disgrace
- Careless, reckless, negligent, or deliberate conduct which may or does result in injury to any person or damage to county property
- Discrimination on the part of a employee against any other employee on the basis of age, race, color, sex, sexual orientation or gender identity, national origin, political or religious affiliation or absence thereof, handicap or disability, veteran status, or personal animosity
- Sexual harassment by an employee of any other employee
- Unauthorized Personal use of county motor vehicles

25.8.3 Examples of offenses that will generally result in dismissal for a first occurrence include but are not limited to:

- Failure to maintain the requirements of employment (For example, an employee in a position requiring a bond becomes unbondable; an employee, who, as part of his or her employment, must drive a motor vehicle or operate heavy equipment loses his or her license to drive or operate heavy equipment or is deemed uninsurable under the general liability insurance policy of the county)
- Abandonment of position: This occurs when an employee has failed to report to work for three (3) consecutive workdays without notifying the supervisor or Department Head. Such an employee is considered terminated for cause and is not eligible for rehire. Job abandonment is not subject to appeal procedures.
- Misuse of Position
- Falsification of an application of employment or other documents used to make an employment decision.
- Conviction of a felony related to one's job, or commission of any act which, whether it results in a conviction or not, would constitute a felony related to ones job.
- Sexual harassment by a supervisor of any other employee
- Misappropriation of county funds
- Falsification of any official report or document
- Campaigning as, or for, a candidate for an elected office when on county time or with County equipment.
- Chronic display of hostile, unfriendly, or abrasive attitude rendering the work place unpleasant or uncomfortable for other employees or persons conducting business with the county
- Failure to submit to a Required Physical Exam, Drug or Alcohol Test, or to follow-up procedures

SECTION 26
DISCIPLINARY APPEALS PROCESS

- 26.1 Appeals of disciplinary actions imposed by Elected Officials and/or the County Manager shall be brought before a Hearing Officer. Appeals must be brought in writing by the Appellant's submitting a letter of official notification through the Human Resources Director within five (5) working days from the imposition of the action. The Human Resources Director shall appoint a Hearing Officer from a maintained list of qualified Hearing Officers to hear the appeal.
- 26.2 Upon the receipt of a notice of appeal the Human Resources Director shall select and schedule a hearing to occur within a reasonable time not to exceed thirty (30) working days. The hearing shall be closed unless the parties, the Human Resources Director, and the Hearing Officer agree to have an open hearing. The employee may represent him or herself or be represented by a person of their choosing as long as the person selected, or the position he or she occupies, does not present a conflict of interest situation.
- 26.3 The standard of review on the appeal shall be made on the basis that there was not just cause to support the disciplinary action taken. After hearing the appeal as presented by the Appellant and Appellee and upon making a record of the hearing, the Hearing Officer shall transmit a decision in writing to the Human Resources Director and the County Manager within thirty (30) working days. The action and findings of the Hearing Officer are hereby declared to be the final action of the County. Any further appeals should be made to the District Court or other appropriate Tribunal.
- 26.4. A successful Appellant is entitled to back pay and benefits and/or reinstatement to a former position or to a position equivalent in pay and responsibilities. McKinley County will determine the equivalency of the position.
- 26.5 The Hearing Officer County Manager, or the Board of County Commissioners may not award punitive damages, interest or attorney fees.
- 26.6 Appealable Disciplinary Actions: For purpose of this Section and otherwise where the context requires the only actions that can be appealed are actions which result in a reduction of pay, demotion, suspension, and termination. Written Warnings and Reprimands are non-appealable.
- 26.7 Appeal Hearing Procedures:
 - 26.7.1 Upon receipt of an employee's appeal the Human Resources Director shall contact affected parties to arrange a date, time, and place for the appeal hearing and notify affected parties, in writing, of arrangements made not less than five (5) working days prior to the date thereof. The Hearing should take place within thirty (30) days of receipt of filing of the appeal.
 - 26.7.2 The Human Resources Director shall provide Appellant a copy of McKinley County Appeal Hearing Procedures and a copy of the section on Discharge and Discipline from the Personnel Ordinance.

- 26.7.3 The employee may only appeal the action on the basis that there was not just cause to support the disciplinary action taken.
- 26.7.4 The Appellant and the Appellee have a right to be represented by an attorney or anyone of their choosing, provided their choice does not constitute a conflict of interest or position. If representation is obtained, the Appellant/Appellee must provide the name, address and phone number of the representative to the Human Resources Director, not less than five (5) workdays prior to the date of the hearing.
- 26.7.5 A representative from the McKinley County Attorney or independent legal counsel may advise the hearing officer.
- 26.7.6 Three (3) days prior to the hearing, the parties shall prepare copies of all exhibits and physical evidence that are to be presented. The parties shall stipulate to exhibits to the extent possible and bring to the hearing adequate copies of the exhibits for the hearing officer, the recording clerk and the opposing party.
- 26.7.7 At the hearing, the proceedings will be tape-recorded. The tape recordings shall be retained by the Human Resource Director's Office for a period of not less than one (1) year from the hearing. The recording shall be transcribed only in the case of appeal to the District Court by one of the respective parties. The party requesting the transcription shall pay for the costs of transcription.
- 26.7.8 If the Appellee or Appellant desires to call any McKinley County employees as witnesses, the name of the employees must be furnished to the Human Resources Director, not less than three (3) work days prior to the date of the hearing so that arrangements can be made for their appearance at the hearing.
- 26.7.9 At the hearing, the Appellant and Appellee may present testimony; call witnesses, present evidence, and cross-examine witnesses for the opposing side.
- 26.7.10 Witnesses are not admitted to the hearing room except when called to testify.
- 26.7.11 The Appellant shall present his/her case first. The Appellee shall then present his/her case.
- 26.7.12 The Appellant and the Appellee shall each be entitled to one opening and one closing statement, at the beginning and end of the hearing. The time limits for each of these presentations shall not exceed ten (10) minutes.
- 26.7.13 The hearing officer shall rule on procedural and substantive issues of the hearing and determine the admissibility of evidence and testimony, all of which must have a direct bearing on the issue being heard, according to evidentiary standards for administrative agencies.
- 26.7.14 Employees who have filed an appeal and employees required to give testimony as witnesses in an appeal hearing shall be given time off with pay if such meetings are scheduled during their regularly scheduled work hours. Former employees, or employees on suspension, layoff, or other unpaid status will not receive pay to attend appeal hearings.
- 26.8 Appeals from the Board of Commissioners: Pursuant to this Section the Hearing Officer's decision is hereby the final decision for further appeal. Any party may appeal this final decision to the Eleventh Judicial District Court, or as provided by law.

- 26.9 Non-Appealable Terminations: Dismissal of Probationary Employees: Probationary employees may be dismissed by the Elected Official/Department Head, after consultation with and approval of the Human Resources Director, County Manager, and/or County Attorney at any time during the probationary period. At the successful completion of the designated probationary period, the employee will attain tenure unless specific action is taken to dismiss the employee.
- 26.10 Termination due to Medical Disability: Employees can be separated from employment for disability when they cannot perform their essential job functions after reasonable accommodation efforts have failed. The County can initiate either by the employee or determination of disability.
- 26.10.1 Diagnosis:
- a. Medical disabilities shall be diagnosed and documented by a physician designated by the County, at the County's expense, if requested by the County.
 - b. If the employee requests that a physician of his or her choice perform a second opinion examination, the employee shall pay the cost of examination.
 - c. If the employee's physician and the County designated physician disagree on the disability or the extent of disability, an independent review shall be conducted by another physician paid for by the County. The decision of the independent physician shall be binding on the parties.
- 26.10.2 Dismissals due to medical disability must be accomplished in consultation with the Human Resources Director and County Attorney.
- 26.11 Abandonment of Position: Is a termination of employment for cause consisting of a period of unauthorized absence for three consecutive scheduled workdays and is non-appealable.
- 26.12 Employees in non-classified positions, other than Elected Officials, do not have the right to appeal dismissal.

**SECTION 27
REDUCTION IN FORCE**

- 27.1 Notwithstanding any other provision of this Ordinance, an employee may be laid-off, demoted, or transferred due to shortage of County funds or for lack of work.
- 27.2 Procedures for Layoffs:
- 27.2.1 When a Department anticipates abolishing an occupied position through reorganization, the Elected Official/Department Head shall notify the County Manager and the employee holding the position at least fifteen (15) working days, or as required by law prior to abolishment.
- 27.2.2 Employees scheduled for layoff due to lack of funds or lack of work shall be notified in writing at least two (2) calendar weeks prior to the effective date of layoff, if possible, or shall be granted equivalent administrative leave with pay.

27.2.3 Employees on layoff must submit an application to the Personnel Office to be considered for vacancies prior to the posting of a vacancy announcement. They must also reapply under an external vacancy announcement to be considered for advertised vacancies.

27.3 Order of Layoff:

27.3.1 The County Manager shall determine the order of layoff on the basis of the relative suitability for the jobs remaining and the length of continuous service with the County. No classified, full-time employee will be laid off if there is a vacant position into which the employee can be transferred for which the employee is qualified, and provided the employee has demonstrated good work record.

27.3.2 Employees scheduled for layoff may be reassigned or demoted to another position provided:

- a. They meet qualifications for the position.
- b. They can be trained to meet the criteria of the position in a reasonable time period.
- c. They agree to accept the salary rate to the pay level to which they are transferred (if lower than their pre-layoff salary rate).

27.3.3 Intermittent, temporary, and probationary employees will be laid off before full or part-time classified employees, unless no qualified tenured employees are available.

27.3.4 When two or more full-time employees who are holding similar position are to be laid off, determination will be made in the following order:

- a. Length of services in the County.
- b. Length of service in the Department (tie breaker #1).
- c. Length of service in the position (tie breaker #2).

27.4 Rehire-Privileges:

27.4.1 Prior to advertising a vacant position, the Elected Official or Department Head shall review the application file of laid-off employees seeking reemployment. The Elected Official or Department Head will have the option of hiring a qualified laid-off employee without advertising the position, or may decide to advertise the position.

27.4.2 Laid off employees who meet the minimum qualifications for a vacant position shall be offered re-employment in reverse order of layoff. The last person to be laid off will be the first person to be offered reinstatement.

27.4.3 Rehire privileges expire twelve months after the effective layoff date; after an employee has refused employment in a position for which he/she is qualified and for which the pay rate is the same or higher than the position previously held; or when a laid-off employee accepts another position within the County.

27.5 Reductions in Pay: Should reductions in pay be necessary, said reductions shall be made on a pro-rata basis throughout the affected Department, which for this purpose shall mean the Office of the Board of Commissioners or an Elected Official and every Department respectively therein.

27.6 Notwithstanding any other provision of the Ordinance, an employee may be discharged, demoted, or reassigned in the event he or she, due to injury or illness, is unable to perform the essential functions of his or her job after the exhaustion of reasonable accommodation efforts, and after the exhaustion of available leave; provided, said employee shall have preference for employment in jobs which he or she meets qualification requirements and is subsequently able to perform with or without reasonable accommodation.

SECTION 28 EMPLOYEE GRIEVANCE PROCEDURES

28.1 The following procedure is intended to provide employees with a means to secure, at the lowest possible level, solutions to an employee's grievance that may arise regarding working conditions, and other work related problems.

28.2 Step One: Meeting with Supervisor and Human Resources Director:

28.2.1 The employee is required to contact his/her supervisor within five (5) working days of the incident or action being grieved.

28.2.2 The employee, supervisor, and the Human Resources Director or designee shall meet if possible within five working days and not longer than ten working days in an attempt to resolve the grievance informally.

28.2.3 Additional meetings may be required and the time limits may be extended by consent of both parties in writing.

28.2.4 Within five (5) working days of the completion of the meeting(s), the supervisor shall provide the employee with a written decision.

28.3 Step Two: Meeting with Elected Officials/Department Head.

28.3.1 If the employee is dissatisfied with the supervisor's decision, the employee may, within five (5) working days following receipt of the written decision, submit a formal grievance to the Elected Officials/Department Head. A formal grievance contains a written statement of the grievance, the circumstance upon which it is based, and the remedy being sought by the employee.

28.3.2 The Elected Official/Department Head or designee and the Human Resources Director shall meet with the employee if possible within five working days but no longer than 10 working days of receipt of the employee's written grievance in attempt to resolve the issue.

28.3.3 The Elected Official/Department Head or designee will respond in writing to the employee within ten (10) working days with the decision.

28.3.4 If a resolution to the grievance is within the specific authority and function of an elective office, the decision of the respective Elected Official will be final. If the matter involves an alleged violation of County Ordinances, or state or Federal law, the employee may appeal the decision to the County Manager.

- 28.4 Step Three: Meeting with the County Manager.
- 28.4.1 When appropriate, the employee may appeal a decision of the Elected Official/Department Head to the County Manager in writing within ten (10) working days of the receipt of the Elected Official/Department Head's written decision. Appropriateness of grievance appeals is left to the discretion of the County Manager with consultation with the Human Resources Director and the County Attorney. See Section 28.3.4.
- 28.4.2 The employee and one witness of his/her choice, if desired, and the Elected Official/Department Head and one witness of his/her choice, if desired, shall meet with the County Manager to discuss the grievance. The County Manager or designee will advise the employee of his/her decision in writing. This decision will be final.
- 28.5 Failure by the grievant to meet the requirements in the grievance procedures in a timely manner will end the grievance. Failure by the designated Step One or Two respondents to respond in a timely manner will allow the grievant to proceed to the next step.
- 28.6 At any point in the process, if the employee believes it would be inappropriate to express the concern to the immediate or a successive level of supervision, the employee may bypass that level. To bypass any level the employee must seek approval to proceed to the next level in writing. The written request must be submitted to the immediate supervisor who shall approve such requests in writing to the employee. These requests for altering the chain of authority do not need to state the grievance but should state the concern(s) for the request.
- 28.7 Conditions or Actions Not Grievable:
- 28.7.1 Dispute as to whether or not an established County Policy or practice is good; however, an employee may grieve a County Policy that he or she feels is illegal.
- 28.7.2 Matters where law mandates a method of review.
- 28.7.3 Matters where the County is without authority to act or does not have the ability to provide a remedy.
- 28.7.4 Dismissals, suspensions, reductions in pay, demotions, are not grievable but must go through the appeal process. Written Warnings are not grievable, nor appealable.
- 28.7.5 Employee complaints charging discrimination based on race, color, national origin, political affiliation, religious faith or absence thereof, sex, sexual orientation and gender identity, age, handicap or disability, or status as a veteran. Such complaints are processed under specific complaint procedures.
- 28.7.6 Temporary assignments, temporary promotions, and removal from temporary assignments and temporary promotions.
- 28.7.7 Position desk audit, job evaluations, and performance appraisals.

SECTION 29 DEFINITIONS

29.1 For purposes of this Ordinance, the following definitions shall apply:

- A. Applicant: A person who has completed and timely submitted a current McKinley County application during the open application period.
- B. Appointing Authority: The County Manager, Sheriff, Clerk, Treasurer, and Assessor, of McKinley County.
- C. Board of County Commissioners: The governing board for McKinley County.
- D. County: A political subdivision of the State of New Mexico; refers to McKinley County and the corporate governing body.
- E. County Commissioner: The individual elected by the voters of a County district, or appointed, to represent a county district.
- F. County Manager: Appointed by the Board of County Commissioners.
- G. County Premises/County Property: All real and personal property owned, operated, leased, or otherwise controlled, land, facilities, buildings, structures, installations, work locations, work areas, or vehicles owned, operated, leased or under the control of McKinley County or used on County business.
- H. Day: Unless otherwise noted, day means calendar day.
- I. Demotion: A reduction in rank, position, or pay.
- J. Department Head: An employee who has the responsibility for managing, administering, or supervising, a Department of McKinley County government.
- K. Discharge: Termination of employment.
- L. Elected Official: An individual elected or appointed to fill a vacancy in an elective office; Assessor, Clerk, Probate Judge, Sheriff, Treasurer. Commissioner is an elected Official but can only act by majority vote in an open meeting
- M. Emergency Appointments: For purposes of Section 7.4.1, is a temporary non-budget hiring for a short duration of time.
- N. Employee: Any person not an Elected Official, and not under separate written contract, in a relationship with McKinley County which would be generally recognized as employment.
- O. Exempt Employee (FLSA): Executive, administrative, and professional employees as defined in the Fair Labor Standards Act that are exempt from the overtime provision of the Fair Labor Standards Act.
- P. Extra pay: Is computed at hour for hour work preformed when a scheduled Sheriff's Deputy works on a Holiday (Section 19.2); and, when a facility is closed and an employee must work in the closed facility (Section 22.1).
- Q. Full-Time Employee: Any employee with a regularly scheduled administrative workweek of 40 hours or more, or law enforcement, fire protection/Emergency Medical Service personnel, who are regularly scheduled a specified number of hours in a designated work period, in accordance with 29 U.S.C. 7(k). Such an employee may be tenured or non-tenured.
- R. Grandparent: The biological Mother or father of an employee's parents.
- S. Grievance Procedure: The process by which employees may bring complaints for resolution on certain issues.

- T. Just Cause: For purposes of taking disciplinary action, just cause for taking an action is defined as a legitimate reason, real cause or basis for taking an action, as opposed to an arbitrary whim or caprice.
- U. Law Enforcement Officers: Sheriff's deputies who are certified, or who are in training to become certified by the State, and are sworn and empowered to make arrests, enforce laws, maintain public peace and order, protect life and property, prevent and detect crimes.
- V. Layoff: The involuntary separation of an employee from County service due to the abolition of a job or position, reorganization, lack of work or lack of funds.
- W. Non-Exempt Employee (FLSA): Employees as defined in the Fair Labor Standards Act who are not exempt from the overtime provision of the Act. All part-time employees are considered "non-exempt" for FLSA purposes.
- X. Parent: Mother or father of an employee, or an adult who had day-to-day responsibility for caring for the employee during his or her childhood years in place of the natural parents.
- Y. Part-time Classified Employee: A part-time classified employee holds a classified position requiring a regularly scheduled workweek of less than 40 hours. Classified part-time employees are subject to the following limitations in benefits:
 - 1. Less than 30 hours per week or .74 of a Full Time Equivalent or less: Ineligible for health, vision, and dental insurance benefits.
 - 2. Less than 20 hours per week or .49 of a Full Time Equivalent or less: Ineligible for PERA Retirement benefits.
- Z. Part-time Temporary Employee: A part-time temporary employee holds an unclassified position with a regularly scheduled workweek of less than 20 hours. All part-time temporary positions expire at the end of each fiscal year unless renewed. Part-time temporary employees do not receive County benefits or accrue annual or sick leave or receive Holiday pay.
- AA. Pay Period: A period of two weeks beginning on a particular day set by the Board of County Commissioners.
- BB. Performance Appraisal: The measuring of an employee's performance over a period of time against standards of performance. Performance Evaluation must be in a form and completed to the satisfaction of the Human Resources Director prior to the granting of any merit increases. Performance Evaluation shall be filed in the employee's personnel file.
- CC. Position Description: Statement of the duties, responsibilities and the needed knowledge, skills and abilities of a person who is to perform a job.
- DD. Probationary Employee: An employee who has not satisfactorily completed a required post-hiring probationary period is a non-tenured employee and serves at the will of the employer.
- EE. Reduction in Pay: Demotion in position or other penalty imposed as part of a disciplinary action, or a decrease in pay due to budgetary reasons.
- FF. Resignation: Voluntary separation from County employment by an employee.
- GG. Retiree: An employee who has ceased work with the County and is receiving or who has applied and is eligible for Public Employee Retirement Association benefits.

- HH. Seniority: Seniority relates to length of continuous service. The County would have employed an employee with “seniority” over another employee for the longer continuous period of time.
- II. Serious Health Condition: Serious health condition means an illness, injury, impairment, or physical or mental condition that involves:
1. Any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or,
 2. A period of incapacity requiring absence of more than three calendar days from work, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; or,
 3. Any period of incapacity due to pregnancy, or for prenatal care; or,
 4. Any period of incapacity (or treatment therefore) due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.); or,
 5. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal disease, etc.); or,
 6. Any absences to receive multiple treatments (including any period of recovery that follows) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three consecutive days if left untreated (e.g., Chemotherapy, physical therapy, dialysis, etc.).
- JJ. Son or Daughter/Child: Biological, adopted or foster child, a stepchild, legal ward, or child of a person standing *in loco parentis*, who is under the age of 18 years. Children who are 18 years or older qualify, if he or she is incapable of self-care because of mental or physical disability.
- KK. Special-Risk Position: any position, including supervisory and managerial positions, in which the nature of duties pose an actual or potential exposure to physical injury to the incumbent, and/or in which impairment of physical or mental condition or impairment by illegal drug or alcohol use would constitute an immediate and direct threat to public health or safety.
- LL. Supervisor: An employee who is assigned to planning, organizing, controlling and directing the work of other employees and who has the authority to hire, promote, evaluate, and discipline employees or to effectively recommend such actions.
- MM. Suspension: The temporary deprivation of a person’s work activity and pay due to a disciplinary action. The temporary withdrawal from employment as distinguished from Discharge or Termination. Suspension(s) imposed for disciplinary penalties are not to exceed ten (10) working days (or the equivalent of one pay period). Suspensions consisting of more than one (1) day must be served in consecutive days.
- NN. Temporary Employee: An employee hired to work in a position designated as seasonal or temporary. A seasonal or temporary position may not be filled for more than 9 consecutive months. Such an employee may work full-time or intermittently. A temporary employee is a non-tenured employee who serves at the will of the employer and is subject to demotion or discharge at any time with or without notice or cause. Such demotion or discharge is not subject to review or appeal. Temporary employees do not receive County benefits or accrue annual or sick leave or receive Holiday pay.

- OO. Tenured Employee: An employee who has completed the post hiring probationary period, and who may be discharged, demoted, suspended, or have his or her salary reduced only for cause as set forth in this Personnel Policy Ordinance.
- PP. Transfer: The organizational move of an employee from one classified position to another classified position having the same pay scale.
- QQ. Twelve (12) month FMLA Period: The twelve (12) month period during which an employee is entitled to twelve (12) workweeks of Family Medical Leave Act leave is a rolling twelve (12) month period measured backward from the date the employee uses any FMLA leave. Each time an employee takes family or medical leave, the remaining leave entitlement will consist of any balance of the twelve (12) weeks that has not been used during the immediately preceding twelve (12) months.
- RR. Vacancy Announcement: Any notice or advertisement published by the Human Resources Department, for recruitment of County positions. Vacancy Announcements may either be open to all applicants, or internal, which is limited to current McKinley County employees in classified positions.
- SS. Year: Unless otherwise noted, year shall mean a fiscal year beginning July 1st and ending June 30th.

**SECTION 30
EFFECT OF EXISTING POLICY**

30.1 This Ordinance No., NOV-05-002, shall operate to repeal Ordinance 12-94-057 and any similar Ordinance covering the same subject matter. No prior Ordinance shall become effective by the repeal of Ordinance 12-94-057. All Standard Operating Procedures and Policies remain unchanged to the extent they are not in conflict with this Ordinance.

This ordinance No., NOV-05-002, shall become effective on the 15th day of December, 2005.

Passed, adopted, and ordained this 15th day of November 2005.

BOARD OF COUNTY COMMISSIONERS
McKINLEY COUNTY

Billy W. Moore, Chairperson

Ernest Becenti, Jr., Commissioner

Dave Dallago, Jr., Commissioner

ATTEST:

Jacqueline Sloan, County Clerk