

**CITY of ALBUQUERQUE
NINETEENTH COUNCIL**

COUNCIL BILL NO. O-10-5 ENACTMENT NO. O. 2010.007

SPONSORED BY: Brad Winter

ORDINANCE

**AMENDING SECTIONS 3-1-2, 3-1-4, 3-1-6, 3-1-7, 3-1-13(E) AND 3-1-14 OF THE
MERIT SYSTEM ORDINANCE TO CLARIFY THE INTENT TO CREATE A
CLASSIFIED SERVICE AND CORRESPONDING PAY SCHEDULE BASED ON
MERIT; TO ENSURE THAT THE AUTHORITY OF THE CHIEF ADMINISTRATIVE
OFFICER WITH RESPECT TO THE EMPLOYMENT OF CITY EMPLOYEES IS
LIMITED TO THE POWERS CONFERRED BY THE CHARTER AND THE MERIT
SYSTEM ORDINANCE.**

**BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
ALBUQUERQUE:**

**SECTION 1. Section 3-1-2 of the Merit System Ordinance is hereby amended to
read as follows:**

**“§ 3-1-2 RESPONSIBILITIES OF THE CHIEF ADMINISTRATIVE OFFICER FOR
PERSONNEL FUNCTIONS.**

**(A) The Chief Administrative Officer shall have the following
responsibilities:**

**(1) To exercise leadership in and encourage the development of
effective personnel administration within the departments, agencies, and
special programs in the city service;**

**(2) To recommend changes to this article for consideration by the
City Council;**

**(3) To approve Personnel Rules and Regulations prior to their
final adoption and publication by the Director of Human Resources as
provided in this article;**

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1 (4) To issue administrative instructions to provide policy and
2 guidance in furtherance of and limited by the responsibilities of the Chief
3 Administrative Officer specifically granted by this article;

4 (5) To approve a compensation plan as recommended by the
5 Director of Human Resources for classified city employees consistent with
6 other provisions of this article; and

7 (6) To designate a Deputy Chief Administrative Officer or a
8 department head to assume the duties of the Chief Administrative Officer in
9 the event of his or her inability to act or absence from the city.

10 (B) The power of appointment or promotion to a position in the
11 classified or unclassified service of the city shall rest with the Chief
12 Administrative Officer; provided that, in the absence of a written directive to
13 the contrary signed by the Chief Administrative Officer, such power may be
14 exercised by the administrative head of a city department, agency or special
15 program for the positions within such department, agency or special program.

16 (C) Pursuant to and within the authority granted by the charter and this
17 article, the Chief Administrative Officer shall have the following authority:

18 (1) To direct the work of City employees;

19 (2) To hire, promote, evaluate, transfer, and assign employees;

20 (3) To reprimand, suspend, demote or discharge unclassified
21 employees and to reprimand, suspend, demote or discharge classified
22 employees for just cause;

23 (4) To determine staffing requirements;

24 (5) To maintain the efficiency of the city government and ensure
25 the carrying out of normal management functions;

26 (6) To take actions as may be necessary to carry out the mission
27 of the city government in emergencies; and

28 (7) To manage and to exercise judgment on all matters
29 specifically within his or her authority pursuant to the charter or this article
30 and not prohibited by a collective bargaining agreement in effect between the
31 city employer and an employee organization.

32 (D) The Chief Administrative Officer shall have no power or authority to
33 appoint the Director of Council Services or to hire, promote, discipline or

1 discharge the staff of the offices of the City Council, which shall be the
2 responsibility of the Director of Council Services.”

3 SECTION 2. Section 3-1-4 of the Merit System Ordinance is hereby amended to
4 read as follows:

5 “§ 3-1-4 PERSONNEL BOARD.

6 (A) There shall be a Personnel Board composed of five members. Two
7 members shall be appointed by the Mayor; they shall have significant
8 management or personnel experience. Two members shall be selected by the
9 employees by election and then appointed by the Mayor. The remaining
10 member shall be selected by the other four members. All board members
11 shall be persons who have resided in the city for a period of at least one year
12 and shall not be elected public officials. All selections shall be subject to the
13 advice and consent of the City Council. Board members shall serve two-year
14 terms which expire September 1.

15 (B) When a vacancy occurs among members selected by the employees,
16 an election by the employees of the city shall be held. Only persons who have
17 received the signatures of at least 20 employees on a nominating petition(s)
18 shall be eligible to be placed on the ballot in the election. When there is one
19 vacancy to be filled, the person who receives the most votes in the employee
20 election shall be appointed by the Mayor to fill the vacancy; where there are
21 two vacancies to be filled, the two candidates with the most votes shall be
22 appointed by the Mayor to fill the vacancies. In the event of a tie the Mayor
23 shall appoint the appropriate member out of the candidates with the most
24 votes. All appointments shall be sent to the Council for advice and consent. If
25 a member appointed by the Mayor pursuant to an employee election is not
26 approved by Council, the Mayor shall appoint the person who had a tie vote
27 with the first appointee; if there was not such a tie, a new election shall be
28 held, and the person with the most votes and who was not previously rejected
29 by the Council shall be appointed by the Mayor and submitted to the Council.

30 (C) Except as provided in this article, the qualifications, appointments,
31 and conduct of the members of the Board and the organizational structure of
32 the Board shall be governed by §§ 2-6-1-1 et seq.”

1 **SECTION 3. Section 3-1-6 of the Merit System Ordinance is hereby amended to**
2 **read as follows:**

3 **"§ 3-1-6 THE CLASSIFIED AND UNCLASSIFIED SERVICE.**

4 **(A) All employees in the city service shall be divided into unclassified**
5 **service and classified service. Elected officials and members of boards,**
6 **commissions and authorities that are not employees of the city shall not be**
7 **covered by the classified or unclassified service.**

8 **(B) The classified service shall be comprised of all employees except**
9 **those who are specifically placed in the unclassified service.**

10 **(C) The unclassified service shall be comprised of the following:**

11 **(1) The Chief Administrative Officer and Deputy Chief**
12 **Administrative Officers;**

13 **(2) Assistants to the Mayor, assistants to the Chief Administrative**
14 **Officer and the secretary to the Chief Administrative Officer;**

15 **(3) The city's Public Information Officer and the secretary to the**
16 **Mayor;**

17 **(4) The City Attorney, Assistant City Attorneys, City**
18 **Clerk/Recorder, administrative heads of departments as established in the**
19 **city's organizational structure, physicians, veterinarians, and the Director of**
20 **the Office of Internal Audit and Investigations;**

21 **(5) Temporary and seasonal employees employed as such;**

22 **(6) Part-time employees employed for less than 20 hours per**
23 **week;**

24 **(7) Administrative heads of agencies or special programs**
25 **sponsored by the city and defined as unclassified by the Chief Administrative**
26 **Officer;**

27 **(8) The Director of Council Services and the Attorney for the**
28 **Council; and**

29 **(9) Any position designated as unclassified by the Chief**
30 **Administrative Officer.**

31 **(D) Unclassified employees are employees at will and serve at the**
32 **discretion of the Chief Administrative Officer, except for unclassified City**
33 **Council staff, who serve at the discretion of the Director of Council Services.**

1 Such employees shall have no property interest in continued unclassified
2 employment and may be dismissed for any or no reason.

3 (E) All employees, except as otherwise provided herein, in the classified
4 service shall be entitled to all of the rights and benefits provided for by this
5 article. All employees in the unclassified service shall be entitled to all of the
6 rights and benefits to which classified employees are entitled except the
7 benefits provided for in §§ 3-1-23, 3-1-24 and 3-1-25.

8 (1) Temporary and seasonal employees are not entitled to any of
9 the rights and benefits of employment to which other employees are entitled
10 under this article.

11 (2) Permanent employees employed for a regular work week of 20
12 hours shall be entitled to half the leave benefits authorized for full-time,
13 permanent employees of the city; leave benefits shall be prorated for
14 employees employed for a regular work week of more than 20 hours. Hours
15 worked in addition to a regular work week shall not entitle an employee to
16 additional leave benefits.

17 (3) Elected officials except as otherwise provided by this article or
18 law, shall be eligible to participate in the retirement, paid life and medical
19 insurance available to full-time, permanent employees of the city.

20 (F) The initial contract between the Mayor and the Chief Administrative
21 Officer, including salary and benefits, shall be presented to the City Council
22 for approval when the Mayor presents his selection for Chief Administrative
23 Officer to the Council for advice and consent pursuant to the City Charter.
24 The Mayor shall notify the Council of subsequent changes in the contract.
25 The Mayor's employment benefits, other than salary, shall be reviewed and
26 approved by the City Council annually as a part of the city budget."

27 SECTION 4. Section 3-1-7 of the Merit System Ordinance is hereby amended to
28 read as follows:

29 "§ 3-1-7 EMPLOYMENT BY THE CITY.

30 (A) Every effort shall be made to fill vacant positions in the city with the
31 best qualified candidate. All vacancies in classified positions will be
32 advertised to all city employees, except probationary police, fire and

1 corrections officers, but applications from persons outside of city employment
2 may be considered at the same time.

3 (B) Subject to preferences required by law, preference shall be given in
4 filling a vacant position of the same or lower grade for which an employee is
5 qualified according to the following order:

6 (1) Employees reinstated as a result of administrative board or
7 judicial action as ordered;

8 (2) Employees returning from active duty in the military;

9 (3) Employees transferred pursuant to § 3-1-2(C) of this article;

10 (4) Employees returning from physical layoff;

11 (5) Nonprobationary employees returning from layoff;

12 (6) Employees notified of layoffs; and

13 (7) Employees returning from authorized absence from work
14 without pay.

15 (C) Employees who have held a classified position with the city for more
16 than ten years prior to serving in an unclassified position shall be allowed to
17 return to a classified position. The position and the compensation of the
18 employee returning to classified service shall not be determined prior to the
19 time the employee leaves unclassified service. The CAO shall place and
20 compensate the returning employee according to the classification and
21 compensation plan of the classified service in place at the time the employee
22 returns to the classified service.

23 (D) The Director of Human Resources, with the approval of the Chief
24 Administrative Officer, shall have the sole authority to place employees who
25 are granted a preference in this section in positions for which they are
26 qualified.

27 (E) Preference for placement, except for employees returning from
28 active duty in the military or placement resulting from administrative or
29 judicial action, shall end one year from the date that the preference was
30 created.

31 SECTION 5. Section 3-1-13(E) of the Merit System Ordinance is hereby
32 amended to read as follows:

1 “(E) No vacation time may be accrued or accumulated by classified or
2 unclassified employees or officials except as provided by this section or as
3 provided by a collective bargaining agreement entered into consistent with §§
4 3-2-1 et seq., Labor- Management Relations.”

5 SECTION 6. Section 3-1-14 of the Merit System Ordinance is hereby amended
6 to read as follows:

7 “§ 3-1-14 SICK LEAVE.

8 (A) Permanent city employees on a regular work week of 40 hours will
9 accrue sick leave at the rate of 3.70 hours biweekly with a maximum
10 accumulation of 1,200 hours allowed. Employees on a regular work week of
11 over 40 hours shall accumulate additional sick leave both biweekly and
12 maximum accumulation on a basis proportional to the 40-hour week.
13 Permanent employees employed for a regular work week of 20 hours shall be
14 entitled to half the leave benefits authorized for full-time, permanent
15 employees of the city; leave benefits shall be prorated for employees
16 employed for a regular work week of more than 20 hours.

17 (B) Sick leave will accrue on a biweekly basis from the date of current,
18 permanent, full-time, probationary or non-probationary employment. Hours
19 worked in addition to a regular work week as listed above shall not entitle an
20 employee to additional sick leave accumulation.

21 (C) Pro-rata conversion to cash payment or to vacation time of sick
22 leave exceeding certain accumulations will be provided for in the Personnel
23 Rules and Regulations. Pro-rata or full conversion of sick leave to early
24 retirement will be provided for in the Personnel Rules and Regulations.
25 Personnel Rules and Regulations providing for conversion to cash payment or
26 to vacation time of sick leave exceeding certain accumulations shall be the
27 same for classified and unclassified employees.

28 (D) Proper and reasonable provisions for controlling and verifying the
29 use of sick and emergency leave will be established in the Personnel Rules
30 and Regulations.

31 (E) In the event that collective bargaining agreements make reference to
32 sick leave benefits, the reference will be to the ordinance as it was in effect at
33 the time the agreement was ratified.

1 **(F) No sick leave may be accrued or accumulated by classified or**
2 **unclassified employees or officials except as provided by this section or as**
3 **provided by a collective bargaining agreement entered into consistent with §§**
4 **3-2-1 et seq., Labor- Management Relations.”**
5 **SECTION 7. SEVERABILITY CLAUSE. If any section, paragraph, word or**
6 **phrase of this ordinance is for any reason held to be invalid or unenforceable**
7 **by any court of competent jurisdiction, such decision shall not affect the**
8 **validity of the remaining provisions of this ordinance. The Council hereby**
9 **declares that it would have passed this ordinance and each section,**
10 **paragraph, sentence, clause, word or phrase thereof irrespective of any**
11 **provision being declared unconstitutional or otherwise invalid.**
12 **SECTION 8. COMPILATION. This ordinance shall be incorporated in and**
13 **made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.**
14 **SECTION 9. EFFECTIVE DATE. This ordinance shall take effect five days after**
15 **publication by title and general summary.**
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1 PASSED AND ADOPTED THIS 17th DAY OF May, 2010
2 BY A VOTE OF: 9 FOR 0 AGAINST.

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Ken Sanchez, President

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City Council

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13 APPROVED THIS 2 DAY OF June, 2010

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16 Bill No. O-10-5

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ATTEST:

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City Clerk

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