

TITLE III: ADMINISTRATION

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' 30.01 DUTIES OF MAYOR AND TRUSTEES.

The Mayor and the Trustees shall perform the duties and obligations prescribed by state law. (75 Code, ' 1-1-2) (Am. Ord. 204, passed 5-20-2003; Am. Ord. 217, passed 12-20-2005)

' 30.02 COMPENSATION.

The Mayor shall receive a salary of \$600 per month. Each trustee shall receive a salary of \$300 per month. The monthly salary herein established shall not be deemed to increase or decrease the current salary of the Mayor or any trustee in office at the time this section is adopted and during the term he or she is then serving.
(Ord. 230, passed 10-21-2008)

' 30.03 DMV ADMINISTRATIVE FEES.

The Village Clerk/Treasurer shall cause to be collected an administrative fee of \$2 from each person requesting a service in connection with every transaction processed for the New Mexico Taxation and Revenue Department, Motor Vehicle Division (MVD) by the Village of Tularosa as an agent of MVD. The Village Treasurer shall deposit the fees so collected in the General Fund of the village.
(Ord. 242, passed 9-15-2010)

Section

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GENERAL PROVISIONS**' 31.01 MUNICIPAL JUDGE.**

(A) The Municipal Judge of the village shall receive a salary of \$1,000 per month.
(^75 Code, ' 2-1-1)

(B) The monthly salary herein established for the Municipal Judge shall not be deemed to increase or decrease the current salary of the duly elected Municipal Judge in office at the time this section is adopted and during the term he or she is then serving.
(^75 Code, ' 2-1-2) (Am. Ord. 230, passed 10-21-2008)

' 31.02 TEMPORARY MUNICIPAL JUDGE.

(A) In the event of the temporary incapacity or absence of the Municipal Judge, the duly elected and qualified Municipal Judge or in his or her absence, the Governing Body may designate any registered voter of the village to hear and determine cases arising under municipal ordinances in the Municipal Court in his or her place and stead; provided, however, that the temporary Municipal Judge so appointed may be subject to the approval of the Governing Body in the event the Governing Body shall desire to appoint and designate the temporary Municipal Judge.
(^75 Code, ' 2-2-1)

(B) The temporary Municipal Judge so designated and appointed shall be paid the sum of \$10 for each day that he or she shall sit and serve as Municipal Judge, the sum to be paid out of the General Fund of the village; provided, however, that, in the event the duly elected and qualified Municipal Judge shall be incapacitated or absent from his or her duties as Municipal Judge for more than 30 days in any calendar year, then and in such event, the compensation for the temporary Judge shall be deducted from the salary of the Municipal Judge in a manner to be determined by the Governing Body.
(^75 Code, ' 2-2-2)

' 31.03 INCARCERATION OF CONVICTED.

(A) Any person upon whom any fine or penalty is imposed upon conviction of the violation of any ordinance of the village, may, upon order of the Municipal Judge convicting him or her, be committed to the Otero County Jail or other place provided by the village for the incarceration of offenders until the fine or penalty is fully paid.

(B) Every defendant so committed shall work for the village, at the direction of the Municipal Judge, at the labor as his or her strength will permit, within or without the prison or other place provided for the incarceration, not exceeding ten hours each working day.

(C) All persons, except indigents, shall pay any fines imposed by the Municipal Court. Persons able to pay the fines who choose not to pay them shall be imprisoned. Persons unable to pay the fines and who so testify under oath or so swear by affidavit shall be allowed to pay the fines over a reasonable period of time or perform appropriate community service as directed by the Municipal Judge. Persons not complying with the Judge's order concerning installment payments of fines or performance of assigned civic duties may be imprisoned if found to be in contempt of court.

(D) Each convicted defendant shall receive a credit of \$5 per day in reduction of any fine so imposed for each day served by him or her in a civic service or in the County Jail.
(^75 Code, ' 2-3-2)

' 31.04 SUSPENSION; PROBATION; COMMUNITY SERVICE.

(A) Upon a plea of guilty or a judgment of conviction for violation of a municipal ordinance, the Municipal Court may suspend, in whole or in part, the execution of sentence or place the defendant on probation for a period not exceeding one year on terms and conditions the Court deems best or both.

(B) Suspension of execution of the sentence or probation, or both, shall be granted only when the Municipal Judge is satisfied it will serve the ends of justice and of the public.

(C) The defendant's liability for any fine or other punishment imposed shall be fully discharged upon successful completion of the terms of probation.

(D) (1) The Municipal Court may, as a condition of probation, require the defendant to serve a period of time in volunteer labor to be known as community service.

(2) The type of labor and period of service shall be at the sole discretion of the Court; provided that, any person receiving community service shall be immune from any civil liability other than gross negligence arising out of the community service and any person who performs community service, pursuant to Court order or any criminal diversion program, shall not be entitled to any wages, shall not be considered an employee for any purpose and shall not be entitled to worker's compensation, unemployment benefits or any other benefits otherwise provided by law.

(3) For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

COMMUNITY SERVICE. Any labor that benefits the public at large or any public, charitable or educational entity or institution.
(^75 Code, ' 2-3-3) (Am. Ord. 125, passed 10-6-1987)

' 31.05 MANDATORY FEES.

(A) Any person convicted of violating any ordinance relating to the operation of a motor vehicle or any ordinance that may be enforced by imposition of a term of imprisonment, shall pay to the Municipal Judge who shall collect the following fees as Court costs:

- (1) A corrections fee as provided in ' 10.99(B)(1)(a).
- (2) A judicial education fee as provided in ' 10.99(B)(1)(b).
- (3) A court automation fee as provided in ' 10.99(B)(1)(c).

(B) All fees collected shall be disbursed and accounted for as provided in this code and NMSA ' 35-14-11.
(^75 Code, ' 2-3-4) (Am. Ord. 181, passed 5-19-1998; Am. Ord. 237, passed 9-16-2009)

POLICE RESERVE CORPS**' 31.15 CREATION.**

There is hereby created a Village Police Reserve Corps, hereinafter called Corps, which shall be a voluntary organization composed of volunteer members to serve without compensation, appointed by the Mayor and confirmed by the Governing Body upon recommendation of the Chief of Police, pursuant to the provisions of this subchapter.

(^75 Code, ' 1-2-1)

' 31.16 AUTHORITY; CHIEF OF POLICE; RULES AND REGULATIONS.

(A) The Chief of Police shall have full authority and control over members of the Corps, subject, however, to the discretion and direction of the Village Governing Body and in accordance with ordinances of the village and laws of the state; provided that, members of the Corps, upon recommendation of the Chief of Police, shall be appointed by the Mayor and confirmed by the Governing Body upon majority vote of all the members.

(B) The Chief of Police shall, from time to time, promulgate and establish in writing appropriate rules and regulations to govern and control the corps, including, but not limited to the enumeration of specific duties which may be assigned for the performance of its members and providing for the preservation of discipline and the maintaining of good order and esprit de corps.

(^75 Code, ' 1-2-2)

' 31.17 QUALIFICATIONS FOR MEMBERSHIP.

(A) No person shall be recommended for appointment as a member of the Corps unless he or she shall have then attained the age of 18 years, shall be a citizen of the United States and a bona fide resident of the county. He or she shall be of good moral character, and further, shall satisfy all requirements as shall be prescribed from time to time by the Chief of Police.

(B) In addition to the foregoing requirements, each applicant for membership shall be fingerprinted and cleared for appointment through the Federal Bureau of Investigation, evidencing the absence of police record and free of arrest for any violation of law other than minor traffic violations and petty misdemeanors not involving moral turpitude. The applicant shall agree to successfully complete a prescribed course of training in police subjects, conduct, ethics and procedures together with other and further requirements as shall be promulgated from time to time by the Chief of Police. When all of the requirements have been satisfied, the Chief of Police may recommend the applicant for appointment to the Corps in the manner above stated, and if accepted for membership by appointment, the applicant shall be sworn into office by the Mayor or his or her authorized representative by administering the oath of office for village officials, as provided by law.

(^75 Code, ' 1-2-3) (Am. Ord. 112, passed 2-7-1984)

' 31.18 TRAINING.

(A) The Chief of Police shall be held responsible and shall make adequate provision for the proper training of members of the Corps in all phases of police activity and conduct.

(B) For this purpose, he or she may assign any one or more of the various police duties to Corps members, and may designate a regularly employed police officer to direct and supervise the Corps

activities, including the assignment by name of a regularly employed police officer who shall be responsible for the instruction, guidance and conduct of a particular member of the Corps in the performance of assigned duty, in the event the assignment of a regular police officer shall be fitting and proper.
(^75 Code, ' 1-2-4)

' 31.19 RANK OR RATING.

No rating or rank shall be awarded to any member of the Corps, and the Corps members shall be and remain subject to the direct and lawful order and authority of any regularly employed member of the Village Police Force; provided, however, that the Chief of Police, or in his or her absence a regularly employed member of the village police to whom a Corps member is assigned, can delegate specific authority to any member of the Corps to act in the absence of the Chief of Police or regular village police officer.
(^75 Code, ' 1-2-5)

' 31.20 IDENTIFICATION CARDS; INSIGNIA; UNIFORM.

(A) Upon being sworn in as a duly appointed member of the Corps, an auxiliary police or reserve commission card, civil defense identification card, badge, cap device and other insignia or evidence of identification, as the Chief of Police may prescribe, shall be issued to each member of the Corps, together with a copy of the rules and regulations governing the conduct, duties and obligations of Corps members. The commission card shall be carried on his or her person by the Corps member, at all times, when assigned to police duty by the Chief of Police or his or her authorized representative; provided, however, that the commission card shall be surrendered and turned in to the Village Police Department at the end of each assigned tour of duty.

(B) While on assigned duty, the uniform for members of the Corps shall be such as shall be prescribed by the Chief of Police. No member of the Corps shall wear the prescribed uniform, badge or other insignia, except while engaged in the performance of the duty or duties as shall have been assigned to him or her by the Chief of Police.

(C) Each member of the Corps shall pay to the village the cost of the reserve commission card or civil defense identification card, as the Chief of Police may prescribe.
(^75 Code, ' 1-2-6)

' 31.21 CARRYING FIREARMS.

No member of the Corps shall be authorized to carry any firearm unless and until he or she shall have been first properly instructed and qualified in the use of firearms and permission to carry any firearm shall first have been issued to him or her by the Chief of Police when he or she is called upon to perform an assigned police duty, as herein provided, and unless, in the performance of which duty, he or she is directed by the Chief of Police to carry the firearm while on duty.

(^75 Code, ' 1-2-7)

' 31.22 POWERS AND DUTIES.

(A) When any member of the Corps has been assigned to any police duty by the Chief of Police or his or her authorized representative and is in proper uniform with prescribed badges and insignia, he or she shall have like powers and authority as are lawfully appurtenant to the office of a regularly employed village police officer and as shall be necessary for the performance of and commensurate with his or her assigned duty or duties, subject however, to the limitations and conditions, if any, as shall be imposed by the Chief of Police.

(B) No member of the Corps shall be deemed to be on duty unless and until he or she has actually been assigned the duty or duties and is in the actual performance of the assignment.

(^75 Code, ' 1-2-8)

' 31.23 ASSISTING REGULAR POLICE OFFICERS.

Duly appointed members of the Corps, in the performance of the duty or duties as shall be assigned to them under the supervision of regularly employed village police officers, shall assist regular officers in the performance of routine police functions of law enforcement and preservation of the public peace and order in accordance with the rules, regulations and orders as shall be promulgated from time to time by the Chief of Police or the Governing Body of the village.

(^75 Code, ' 1-2-9)

' 31.24 WORKMEN'S COMPENSATION BENEFITS; INDEMNITY INSURANCE.

(A) It is hereby declared to be a condition precedent to the appointment of any applicant as a Corps member that the applicant first expressly agree that, if appointed, he or she shall not, in any way, be entitled to, eligible for, nor shall he or she receive compensation in any form by way of worker's compensation benefits as are accorded by law to regularly employed village employees for personal injury sustained within the scope of their employment; provided, however, that it shall be the duty of

the Chief of Police, before permitting any duly appointed Corps member to perform any police duty whatsoever for and on behalf of the village, to insure that the duly appointed Corps member is included in and covered by adequate personal injury underwriter's coverage or the equivalent thereof as will indemnify the village of, from and against any and all liability by virtue of claims for compensation, demands and chooses an action, accrued or accruing, as shall in any way arise out of or incident to personal injury sustained by any Corps member while engaged in the performance of his or her lawfully assigned police duty or duties for and on behalf of the village.

(B) Anything herein to the contrary notwithstanding, the authority of any Corps member to perform any police duty for and on behalf of the village shall be subject to and coexistent with the indemnity insurance coverages in being and in full force and effect.

(C) The indemnity insurance coverage shall be purchased by each Corps member or otherwise acquired by each Corps member without expense to the village.
(^75 Code, ' 1-2-10)

' 31.25 TERMINATION OF MEMBERSHIP.

(A) Membership of any person in the Corps may be terminated at any time by the Chief of Police for any reason, by notice in writing directed to the Corps member, and any Corps member may elect to resign at any time on notice in writing thereof to the Chief of Police.

(B) Upon termination of membership in the Corps, the member shall surrender and account for all village property theretofore issued to him or her.
(^75 Code, ' 1-2-11)

' 31.26 IMPERSONATING MEMBER PROHIBITED.

It shall be unlawful for any person not a bona fide member of the Corps to wear, carry or display a Corps identification card, commission card, badge, cap piece, insignia or uniform or in any manner to represent himself or herself to be a Corps member or affiliated or connected with the Corps.
(^75 Code, ' 1-2-12) Penalty, see ' 10.99

Section

General Provisions

CHAPTER 32: PERSONNEL

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- 32.02 Conflicts
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- 32.04 Employee rights
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- 32.16 Elections
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- 32.18 Decertification
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Labor Management Relations Board

- 32.35 Creation and terms
- 32.36 Powers and duties
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Cross-reference:

Duties of mayor and trustees, see ' 30.01

Municipal judge, see ' 31.01

Police reserve corps, see ' ' 31.15 through 31.26

Temporary municipal judge, see ' 31.02

GENERAL PROVISIONS**32.01 PURPOSE.**

The purpose of this chapter is:

(A) To guarantee employees the right to organize and bargain collectively with their employers;

(B) To promote harmonious and cooperative relationships between employers and employees;

(C) To protect the rights of employers; and

(D) To acknowledge the rights of the citizens to orderly and uninterrupted delivery of village services.
(Ord. 151, passed 3-16-1993)

32.02 CONFLICTS.

In the event of conflict with other village ordinances, the provisions hereof shall supersede any other previously enacted ordinances with respect to labor relations. Village sanctioned rules and regulations, administrative directives, departmental rules and regulations and work place practices shall control unless there is a conflict with a collective bargaining agreement. Where a conflict exists, the collective bargaining agreement shall control.

(Ord. 151, passed 3-16-1993)

32.03 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

APPROPRIATE BARGAINING UNIT. A group of employees designated by the Board for the purpose of collective bargaining. Appropriate units shall be formed by occupational group, such as blue collar (unskilled, semi-skilled and skilled), white collar (clerical, secretarial, administrative, technical and para-professional), professional, corrections, fire and police.

BOARD. The Tularosa Labor Management Relations Board.

CERTIFICATION. The designation, by the Board, of labor organization as the exclusive representative for all employees in an appropriate bargaining unit.

COLLECTIVE BARGAINING. The act of negotiating between the employer and an exclusive representative for the purpose of entering into a written agreement regarding wages, hours and conditions of employment.

CONFIDENTIAL EMPLOYEE. A person who assists and acts in a confidential capacity with respect to a management employee.

EMPLOYEE. A regular full-time non-probationary employee of the village.

EMPLOYER. The Village of Tularosa, New Mexico.

EXCLUSIVE REPRESENTATIVE. A labor organization that, as a result of certification by the Board, represents all employees in an appropriate bargaining unit for the purposes of collective bargaining.

GOVERNING BODY. The Board of Trustees of the Village of Tularosa.

GRIEVANCE. A written complaint by a bargaining unit employee regarding an action taken by management resulting in a disciplinary action that does not involve an application or interpretation of a collective bargaining agreement in effect between the exclusive representative and the employer.

IMPASSE. Failure of the employer and an exclusive representative, after good-faith bargaining to reach agreement in the course of negotiating a collective bargaining agreement.

LABOR ORGANIZATION. Any employee organization which represents employees in collective bargaining.

LOCKOUT. An act by the employer to prevent its employees from going to work for the purpose of resisting demands of the employees= exclusive representative or for the purpose of gaining a concession from the exclusive representative.

MANAGEMENT EMPLOYEE. An employee who is engaged primarily in executive and management functions and is charged with the responsibility of developing, administering or officiating management policies.

MEDIATION. Assistance by an impartial third party to resolve an impasse between an employer and an exclusive representative regarding employment relations through interpretation, suggestion and advice.

PROFESSIONAL EMPLOYEE. An employee whose work is predominantly intellectual and varied in character and whose work involves the consistent exercise of discretion and judgment in its performance and requires knowledge of an advanced nature in a field of learning customarily requiring specialized study at an institution of higher education or its equivalent. The work of a **PROFESSIONAL EMPLOYEE** is of the character that the output or result accomplished cannot be standardized in relation to a given period of time.

STRIKE. An employee's refusal, in concerted action with other employees, to report for duty or his or her willful absence in whole or in part from the full, faithful and proper performance of the duties of employment. The definition of **STRIKE** includes, but is not limited to such actions as the blue flu, sick outs, slow downs, traffic ticket writing campaigns, mass resignations and sympathy strikes.

SUPERVISOR. An employee who devotes a substantial amount of work time in supervisory duties, who customarily directs the work of two or more other employees and who has the authority in the interest of the employer to effectively recommend the retention, promotion or discipline of other employees. (Ord. 151, passed 3-16-1993)

' 32.04 EMPLOYEE RIGHTS.

Employees, other than management employees, supervisors and confidential employees, may form, join or assist any labor organization for the purpose of collective bargaining through representatives chosen by employees through representation elections without interference, restraint or coercion. The employees also have the right to refuse to form, join or assist any labor organization. Employees may not be required to pay fair-share contributions. (Ord. 151, passed 3-16-1993)

' 32.05 MANAGEMENT RIGHTS.

Unless limited by the provisions of a collective bargaining agreement or other statutory provision, the exclusive prerogatives, functions and rights of the employer shall include, but are not limited to the following:

- (A) To direct and supervise all operations, functions and the work of the employees;
- (B) To determine the place to report for work, to determine methods, processes and manner of performing work;
- (C) To hire, lay off, promote, demote, assign, transfer, discipline, discharge or terminate employees;

(D) To determine what and by whom services will be rendered to the citizens;

(E) To determine staffing requirements, create and abolish positions or to eliminate or reorganize work units;

(F) To determine and revise schedules of work;

(G) To establish, revise and implement standards for hiring and promoting employees;

(H) To assign shifts, work days, hours of work and work locations;

(I) To designate, assign and reassign all work duties;

(J) To determine the need for and the qualifications of new employees and to determine the qualifications for and qualifications of employees considered for transfer and promotion;

(K) To take actions as necessary to carry out the mission of the employer in emergencies; and

(L) To retain all rights not specifically limited by a collective bargaining agreement or this chapter. (Ord. 151, passed 3-16-1993)

EMPLOYER/EMPLOYEE RELATIONS

' 32.15 APPROPRIATE BARGAINING UNITS.

(A) The Board shall, upon receipt of a valid petition for a representation election filed by a labor organization, designate the appropriate bargaining units for collective bargaining. Occupational groups shall generally be identified as blue collar, white collar, professional, para-professional, police, fire and corrections. Bargaining units shall not be determined by craft or trade designations. The parties, by mutual agreement and approval of the Board, may further consolidate occupational groups. Essential factors in determining appropriate bargaining units shall include the principals of efficient administration of government and the history of collective bargaining within the municipality, if any, and the assurance to the employees of their rights guaranteed by ' 32.04.

(B) Within 30 days of the filing of a show of interest petition, the Board shall hold a hearing concerning the composition of the bargaining unit.

(C) The Board shall not include, in any appropriate bargaining unit, supervisors, managers or confidential employees.

(Ord. 151, passed 3-16-1993)

' 32.16 ELECTIONS.

(A) Whenever, in accordance with regulations prescribed by the Board, a petition is filed by a labor organization containing the valid signatures of at least 30% of the employees in an appropriate bargaining unit, the Board shall conduct a secret ballot representation election.

(B) (1) Once a labor organization has filed a valid petition with the Board calling for a representation election, other labor organizations may seek to be placed on the ballot.

(2) Any organization may file a petition with the Board containing the valid signatures of not less than 10% of the employees in the appropriate bargaining unit no later than ten days after the Board and the employer post a written notice that the petition containing the signatures of not less than 30% of the employees has been filed by a labor organization.

(C) Every election shall include the option for no representation.

(D) In the event of an election with two or more organizations on the ballot where neither of the choices received a majority of the votes cast, then and in such an event, a run-off election shall be held within 30 days. The choices on the run-off election shall consist of the employee organization which received the greatest number of votes in the original election and the choice of No representation. @

(E) Where a majority of the votes cast are in favor of representation by a labor organization and at least 60% of the members in the bargaining unit have cast a vote, the Board shall certify the labor organization as the exclusive representative for all employees in that appropriate bargaining unit. No labor organization shall be certified as an exclusive representative unless at least 60% of the members of the bargaining unit vote in the election or run-off election.

(F) No election shall be conducted if an election or runoff election has been conducted in the 12-month period immediately preceding the proposed representation election. No election shall be held during the term of an existing collective bargaining agreement, except as provided in ' 32.18.

(G) Election disputes shall be resolved by the Board.

(H) The cost of elections shall be borne equally by the parties.
(Ord. 151, passed 3-16-1993)

' 32.17 EXCLUSIVE REPRESENTATION.

(A) (1) A labor organization that has been certified by the Board as representing the employees in the appropriate bargaining unit shall be the exclusive representative of all employees in the appropriate bargaining unit.

(2) The exclusive representative shall act for all employees in the appropriate bargaining unit and negotiate a collective bargaining agreement covering all employees in the appropriate bargaining unit without discrimination or regard to membership in the labor organization.

(B) (1) The existence of an exclusive bargaining representative shall not prevent employees in or out of a bargaining unit from taking their grievances or prohibited practices to their supervisor or management or filing prohibited practices with the Board based upon discrimination by the exclusive representative or the employer. The Board will adjudicate disagreements over contract interpretations only when the disagreement is between the employer and the exclusive representative.

(2) Any settlement of a grievance or relief given on a prohibited practice brought by an individual shall not be inconsistent with or in violation of the collective bargaining agreement then in effect between the employer and the exclusive representative or inconsistent with or in violation of good faith resolution made between the employer and the exclusive representative in the day-to-day administration of the collective bargaining agreement.
(Ord. 151, passed 3-16-1993)

32.18 DECERTIFICATION.

(A) Any member of a bargaining unit or a labor organization may initiate decertification of a labor organization as the exclusive representative if 30% of the employees in the appropriate bargaining unit make a written request to the Board for a decertification election. Decertification elections shall be held in a manner prescribed by rules of the Board.

(B) When there is a collective bargaining agreement in effect, a request for a decertification election shall be made to the Board no earlier than 90 days and no later than 60 days before the expiration of the collective bargaining agreement; provided, however, that a request for an election may be filed at any time after the expiration of the third year of a collective bargaining agreement with a term of more than three years.

(C) When, within the time period prescribed in division (B) above, a competing labor organization files a petition containing signatures of at least 30% of the employees in the appropriate bargaining unit, a representation election rather than a decertification election shall be conducted.

(D) When an exclusive representative has been certified, but no collective bargaining agreement is in effect, the Board shall not accept a request for a decertification election earlier than 12 months subsequent to a labor organization's certification as the exclusive representative.
(Ord. 151, passed 3-16-1993)

32.19 SCOPE OF BARGAINING.

(A) Except for retirement programs provided under the Public Employees Retirement Act or other municipal retirement plans, employers and exclusive representatives shall bargain in good faith on wages, hours and other terms and conditions of employment. However, neither the employer, nor the exclusive representative, shall be required to agree to a proposal or to make a concession. All collective bargaining agreements between the parties shall be reduced to writing.

(B) (1) The obligation to bargain collectively imposed hereby shall not be construed as authorizing employers and exclusive representatives to enter into any agreement that is in conflict with the provisions of any ordinance of the municipality, state statute or federal statute. The employer and the exclusive representative may not negotiate agreements that would be in conflict with ordinances of the municipality, state statutes or federal statutes.

(2) In the event of conflict between the provisions of any statute of this state or federal government and any agreement entered into by the employer and the exclusive representative in collective bargaining, the former shall prevail.

(C) Payroll deduction of the exclusive representative's membership dues is a negotiable item by either party. The amount of dues, if the provision is agreed to by the parties, shall be certified in writing by an official of the labor organization and shall not include special assessments, penalties or fines of any type levied by the exclusive representative. During the time that a Board certification is in effect for a particular appropriate bargaining unit, the employer shall not deduct dues for any other labor organization from members of the same bargaining unit.

(D) Any agreement provision by the employer and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the Governing Body and the availability of funds.

(E) The parties have a requirement that grievance procedures culminating with binding arbitration be negotiated. This applies only to grievances and does not apply to negotiations impasse.

(F) The following meetings shall be closed, as defined by the Open Meetings Acts:

(1) Meetings for the discussion of bargaining strategy for collective bargaining negotiations between the employer and the exclusive representative;

(2) Collective bargaining sessions; and

(3) Consultations and impasse resolution procedures at which the employer and/or the exclusive representative of the appropriate bargaining unit are present.

(Ord. 151, passed 3-16-1993)

32.20 NEGOTIATIONS; IMPASSE RESOLUTION.

(A) The following negotiation procedures shall apply to the employer and exclusive representatives.

(1) Negotiations shall be opened upon written notice by either party to the other requesting that negotiating sessions be scheduled. The request shall be post marked no earlier than 120 days nor later than 60 days prior to the contract ending date. The parties may open negotiations at any time by mutual agreement.

(2) Negotiating teams will consist of a maximum of five persons designated by the exclusive representative and a maximum of five persons designated by the Mayor.

(3) All negotiations will be conducted in closed sessions. Negotiations will be held at the facilities and at a time mutually agreed upon by the negotiating teams. Negotiations will begin with the party that requested the negotiations presenting their complete proposal and changes, section by section.

(4) Following the complete presentation of both proposals, the parties will identify the economic and non-economic issues. All non-economic issues must be resolved prior to negotiating economic issues.

(5) Recesses and study sessions may be called by either team. Prior to these recesses or study sessions, the reconvening time will be agreed upon. A caucus may be taken as needed.

(6) Employees who are members of the exclusive representatives negotiating team will be released from their normal duties without pay to participate in negotiations.

(7) Tentative agreements reached during negotiations will be reduced to writing, dated and initialed by each team spokesperson. The tentative agreements are conditional and may be withdrawn should later discussion change either team's understanding of the language as it relates to another part of the agreement.

(8) Agreement on contract negotiations is accomplished when the Union President and the Mayor sign the agreement. Provisions in multi-year agreements providing for economic increases in subsequent years shall be contingent upon the Governing Body appropriating the funds necessary to fund the increase for subsequent years. Should the Governing Body not appropriate sufficient funds to fund the agreed upon increase for a subsequent year, either party may reopen negotiations.

(B) The following impasse procedure shall be followed by the employer and exclusive representatives.

(1) If an impasse occurs, either party may request, from the Board, that a mediator be assigned to the negotiations unless the parties can agree on a mediator. A mediator from the Federal Mediation and Conciliation Service will be assigned by the Board to assist negotiations.

(2) If the impasse continues after a 30-day mediation period, either party may request from the Board that a fact-finder be assigned to the negotiations. A fact-finder will be selected by the parties from a list of individuals requested from the Federal Mediation and Conciliation Service.

(3) The fact-finder shall conduct hearings and submit written findings and recommendations to the parties and the Board. The fact-finder shall select either the exclusive representative's total and complete last best offer or he or she may select the employer's total and complete last best offer. The fact-finder may not create his or her own settlement. If the parties have not reached agreement within 15 days after receipt of the fact-finder's report, the Board shall publish the fact-finder's recommendation.

(4) The Governing Body may accept, reject or modify the fact-finder's recommendation. The decision of the Governing Body is final and binding on both parties and shall be incorporated into the agreement along with those items that had been tentatively agreed to by the parties.

(5) The cost of any impasse proceeding that requires a third party shall be borne equally by the parties to the impasse.

(Ord. 151, passed 3-16-1993)

32.21 PROHIBITED PRACTICES; EMPLOYERS.

(A) No employer or his or her representative shall:

(1) Discriminate against an employee with regard to terms and conditions of employment because of the employee's membership in a labor organization;

(2) Restrain or coerce any employee in the exercise of any right guaranteed hereunder;

(3) Dominate or coerce employees in the formation, existence or administration of any labor organization;

(4) Discriminate in regard to hiring, tenure or any term or condition of employment in order to encourage or discourage membership in a labor organization;

(5) Discharge or otherwise discriminate against an employee because he or she has signed or filed an affidavit, petition, grievance or complaint or given any information or testimony under the provisions hereof or because an employee is forming, joining or choosing to be represented by a labor organization;

(6) Refuse to bargain collectively in good faith with the exclusive representative;

(7) Refuse or fail to comply with any provision hereof or Board regulation; or

(8) Refuse or fail to comply with any collective bargaining agreement.

(B) During the negotiating process, including the impasse procedure, elected village officials are prohibited from discussing any issue, which is subject of negotiations, with employees of the bargaining unit involved in negotiations and employees of the exclusive representative.

(Ord. 151, passed 3-16-1993) Penalty, see ' 10.99

' 32.22 PROHIBITED PRACTICES; EMPLOYEES, LABOR ORGANIZATION OR REPRESENTATIVE.

An employee, labor organization or its representative shall not:

(A) Discriminate against an employee with regard to labor organization membership because of race, color, religion, creed, age, sex or national origin;

(B) Solicit membership for an employee or labor organization during the employee's duty hours;

(C) Interfere with, restrain or coerce any employee in the exercise of any right guaranteed by the provisions hereof;

(D) Interfere with, restrain or coerce any elected official, employee or representative of the employer in the conduct of his or her duties;

(E) Refuse to bargain collectively in good faith with the employer;

(F) Refuse or fail to comply with any collective bargaining or other agreement with the employer;

(G) Refuse or fail to comply with any provision hereof;

(H) Picket homes or private businesses of elected officials or employees;

(I) Interfere with or coerce the employer in the selection of its agent for bargaining;

(J) Interfere with the normal process of negotiations between the duly authorized negotiating teams of the employer and the exclusive representative; or

(K) During the negotiating process, including the impasse procedure, discuss any issue with village elected officials which is a subject of negotiations.

(Ord. 151, passed 3-16-1993) Penalty, see ' 10.99

32.23 STRIKES AND LOCKOUTS.

(A) No employee or labor organization shall engage in a strike. No employee labor organization shall cause, instigate, encourage or support a strike. No employer shall cause, instigate or engage in any employee lockout.

(B) (1) In the case of an action by bargaining unit employees where the employer alleges a strike has occurred, the Labor Management Relations Board shall meet in emergency session, within 24 hours of the filing of the charge by the employer, and determine whether a strike has indeed occurred.

(2) In case the Board must meet in accordance with this emergency during the absence of a Board member, the Mayor shall appoint an interim member with due regard to the representative character of the Board.

(C) (1) Should it be determined by the Board that bargaining unit employees participated in, caused, instigated, encouraged or supported a public employee strike, walkout or slow-down, the exclusive representative for that bargaining unit shall be automatically decertified by the Labor Management Relations Board.

(2) In such case, the collective bargaining agreement shall be null and void, the exclusive representative for that appropriate bargaining unit may not collect dues, negotiate or represent employees in any fashion, and shall be barred from serving as the exclusive representative of any bargaining unit of village employees for a period of not less than one year.

(Ord. 151, passed 3-16-1993)

32.24 VALID AGREEMENTS.

All collective bargaining agreements and other agreements between employers and exclusive representatives are valid and enforceable according to their terms when entered into in accordance with the provisions hereof.

(Ord. 151, passed 3-16-1993)

32.25 JUDICIAL ENFORCEMENT; STANDARD OF REVIEW.

(A) The Board may request the District Court to enforce any order issued pursuant hereto, including those for appropriate temporary relief and restraining orders. The Court shall consider the request for enforcement on the record made before the Board. It shall uphold the action of the Board and take appropriate action to enforce it unless it concludes that the order is:

(1) Arbitrary, capricious or an abuse of discretion;

- (2) Not supported by substantial evidence on the record considered as a whole; or
- (3) Otherwise not in accordance with law.

(B) (1) Any person or party, including any labor organization affected by a final regulation, order or decision of the Board may appeal to District Court for further relief.

(2) All appeals shall be based upon the record made at the Board hearing. All appeals to District Court shall be taken within 30 days of final regulation, order or decision of the Board.

(3) Actions taken by the Board shall be affirmed unless the Court concludes that the action is:

- (a) Arbitrary, capricious or abuse of discretion;
- (b) Not supported by substantial evidence on the record taken as a whole; or
- (c) Otherwise not in accordance with law.

(Ord. 151, passed 3-16-1993)

LABOR MANAGEMENT RELATIONS BOARD

32.35 CREATION AND TERMS.

(A) The Labor Management Relations Board is hereby created. The Board shall consist of three members appointed by the Mayor with the approval of the Governing Body. The Mayor shall appoint one member recommended by organized labor representatives actively involved in representing employees, one member recommended by management and one member jointly recommended by the two other appointees.

(B) Board members shall serve for a period of one year with terms commencing April 1 of each year. Vacancies shall be filled in the same manner as the original appointment and the appointments shall only be made for the remainder of the unexpired term. A Board member may serve an unlimited number of terms.

(C) During the term for which he or she is appointed, no Board member shall hold or seek any other political office or public employment, be an individual representing the employer in collective bargaining or be an employee of the labor organization representing the village employees.

(D) Each Board member shall be paid statutory mileage and per diem for hearings required under this chapter.

(E) The cost of any hearing will be borne equally by the parties to the hearings.
(Ord. 151, passed 3-16-1993)

' 32.36 POWERS AND DUTIES.

(A) The Board shall promulgate rules and regulations necessary to accomplish and perform its functions and duties, as established herein, including the establishment or procedures for:

- (1) The designation of appropriate bargaining units;
- (2) The selection, certification and decertification of exclusive representatives; and
- (3) The filing of, hearing on and determination of complaints of prohibited practices.

(B) The Board shall:

- (1) Hold hearings and make inquiries necessary to carry out its functions and duties;
- (2) Request from employers and labor organizations the information and data necessary to carry out the Board's functions and responsibilities; and
- (3) Hire personnel or contract with third parties as the Governing Body deems necessary to assist the Board in carrying out its functions.

(C) The Board may issue subpoenas requiring, upon reasonable notice, the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents relating to any matter in question. The Board may prescribe the form of subpoena, but it shall adhere insofar as practicable to the form used in civil actions in the District Court. The Board may administer oaths and affirmations, examine witnesses and receive evidence.

(D) The Board shall decide all issues by majority vote and shall issue its decisions in the form of written orders and opinions. The decisions of the Board on interpretation and applications of the ordinance and collective bargaining agreements are final and binding on the parties subject to the appeal provisions in ' 32.25.

(E) The Board has the power to enforce provisions hereof and labor management agreements through the imposition of appropriate administrative remedies.

(F) The Board shall have no power to promulgate policy other than to accomplish and perform its functions and duties.

(G) No rule or regulation promulgated by the Board shall require, directly or indirectly, as a condition of continuous employment, any employee covered hereby to pay money to any labor organization that is certified as an exclusive representative.
(Ord. 151, passed 3-16-1993)

32.37 HEARING PROCEDURES.

(A) The Board may hold hearings for the purposes of:

(1) Information gathering and inquiry;

(2) Adopting rules and regulations; and

(3) Adjudicating disputes and enforcing the provisions hereof and rules and regulations adopted pursuant to that act.

(B) The Board shall adopt regulations setting forth procedures to be followed during hearings of the Board. The regulations shall meet minimal due process requirements of the State and Federal Constitutions.

(C) (1) Charges of prohibited labor practices that are filed within 60 days of the time the complainant knew or with reasonable diligence should have known of the commission or omission of the act that generated the charges shall be heard by the Board. The charges must identify the specific violation and relief requested.

(2) Proceedings against the party alleged to have committed a prohibited practice shall be commenced by service upon it and the Board of a written notice together with a copy of the charges and relief requested.

(D) All adopted rules and regulations shall be filed in accordance with applicable local ordinances.

(E) A verbatim record made by electronic or other suitable means shall be made of every rule-making and adjudicatory hearing. The record shall not be transcribed unless required for judicial review or unless ordered by the Board. Payment for the transcription shall be made by the party requesting the review.

(F) Each party to a prohibited labor practice shall bear the cost of producing its own witnesses for hearings.

(G) No regulation proposed to be adopted by the Board that affects any person or governmental entity outside of the Board and its staff shall be adopted, amended or repealed without public hearing and comment on the proposed action before the Board. The public hearing shall be held after reasonable notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained. All meetings shall be held in the village. Notice shall be published once at least 30 days prior to the hearing date in a newspaper of general circulation in the village and notice shall be mailed at least 30 days prior to the hearing date to persons who have made written request to the appropriate village official for advance notice of hearings related to this chapter.

(Ord. 151, passed 3-16-1993)

Section

33.01 Creation **CHAPTER 33: CIVIL DEFENSE ORGANIZATION**

' 33.01 CREATION.

There is hereby created the Civil Defense Organization for the village, as an agency of the government to be composed of the Mayor and other persons that he or she may appoint from time to time. The Mayor shall appoint a director and a staff to serve at the pleasure of the Mayor or until repeal of this chapter.
(75 Code, ' 1-3-1)

Section

34.01 Election proceedings **CHAPTER 34: ELECTIONS**

' 34.01 ELECTION PROCEEDINGS.

All election proceedings for the village shall be conducted in the manner prescribed by the laws and statutes of the state in force and as the same may from time to time be amended.

(^75 Code, ' 1-4-1)

Section

35.01	Established	CHAPTER 35: PUBLIC LIBRARY
35.02	Director	
35.03	Board	
35.04	Unlawful acts	
35.05	Property acquisition and disposal	

' 35.01 ESTABLISHED.

There is hereby established a library in the village, a free public library to be known as the Tularosa Public Library. Such library is a proper and legitimate object of expenditure and operation of the village. The library is a department of and shall be administered by the village.
(Ord. 207, passed 1-20-04)

' 35.02 DIRECTOR.

Pursuant to NMSA ' 3-11-6, the Mayor shall appoint a Library Director over any staff for the public library system who shall be the administrative officer of the library, or may be a non-compensated volunteer. The Mayor shall consult with the Library Board on selection of the Library Director.
(Ord. 207, passed 1-20-04)

' 35.03 BOARD.

(A) *Created; duties.* The Library Board is created as an advisory board to the village. The Library Board shall advise and assist the Board of Trustees to ensure the efficient and economical management and operation of the Tularosa Public Library.

(B) *Purposes.* The Library Board is created as a liaison between the community and the Board of Trustees for the following purposes:

- (1) To keep itself informed of library needs and to serve as a forum for discussion;

(2) To recommend to the Board of Trustees policies for overall development, including plans for additional library facilities and programs;

(3) To encourage the greatest use of library facilities and programs;

(4) To recommend to the Board of Trustees in a timely manner the fiscal year operating budget and to recommend budget adjustments if needed.

(C) *Composition.* The Library Board shall consist of five members who shall be appointed by the Mayor with the approval of the governing body of the village. The members shall include, as far as possible, representatives of various geographic, ethnic, socioeconomic, professional and business interests of the community.

(D) *Terms of office.*

(1) The members of the Library Board shall hold terms of office as follows: appointments for terms commencing January 1, 2004, and thereafter, shall be for a term of two years, ending on December 31 at the end of term of office. Appointments to unexpired terms will be for the remainder of the term.

(2) Terms of office shall be staggered so that terms of office of three members expire in odd numbered years and two members expire on even numbered years.

(3) At initial activation of the Library Board, three members shall be appointed to serve a two year term of office and two members shall be appointed to serve a one-year term of office. Thereafter, all appointments to the Library Board shall be for two years.

(E) *Nomination, appointment, removal procedures for members.*

(1) At least two months before a term of a Library Board member expires, the Mayor shall notify the members of the Board of Trustees of the pending vacancy and the name of the incumbent Board member. The Mayor may request a Library Board recommendation for filling the vacancy. The Mayor may seek other candidates for the vacancy. Persons appointed to Board membership will be notified of their appointment in writing asking for acceptance or rejection of the position in writing. If a vacancy occurs for reasons other than expiration of a term, the same procedure will be followed.

(2) The Mayor may remove any Board member who misses three consecutive meetings in a term year. The chairman of the Library Board shall report such absences to the Mayor. The Mayor will investigate the circumstances of the absences and report thereon to the Board of Trustees at their next regularly scheduled meeting and such removal shall be subject to the approval of the governing body of the village.

(F) *Members to serve without compensation.* All members of the Board created by this chapter shall serve without compensation.

(G) *Conflict of interest.* Members of the Board having a private interest in matters before the Board shall disqualify themselves from discussion and voting on that matter.

(H) *Officers.* The Library Board shall elect a minimum of three officers; those being Chairman, Vice Chairman and Secretary-Treasurer. The Board may elect such other officers as the Board deems necessary. Each officer shall be elected by the members of the Board for a term of one year and shall be elected at the first meeting of each calendar year. No officers shall serve more than two consecutive terms in the same office.

(I) *Meetings.*

(1) A quorum of three members is required for the conduct of Board business. A motion shall carry upon the affirmative vote of the majority of the members present at any meeting. The Board shall adopt additional rules to govern its proceedings.

(2) All meetings shall be open to the public and insofar as possible shall be held at public-owned facilities. The Board shall meet at least monthly, and may hold additional meetings at its discretion. Notice of the time, place and agenda meetings must be published as prescribed by the library's public meetings resolution.

(3) The Library Director is an ex officio member of the Board without vote, being responsible for administration of library facilities.

(4) Board minutes shall be brief and include date and place of meeting, attendance, items discussed and action recommended. Minutes shall be filed with the Village Clerk/Treasurer and sufficient copies forwarded to the Mayor for distribution as prescribed.

(5) Minutes of the last monthly meeting each term year, January 1 to December 31, shall contain a summary of recommendations and record of attendance of members for the term year.

(J) *Reports.* The Library Board shall submit a monthly status report to the Mayor and Board of Trustees identifying timely library operations issues the Mayor and Board of Trustees should be made aware of. This report is due to the Village Clerk/Treasurer the Friday before the regular monthly meeting of the Board of Trustees.

(Ord. 207, passed 1-20-04)

' 35.04 UNLAWFUL ACTS.

(A) *Damage.* Any person, carrying away without authority, misusing, cutting, writing upon, damaging, defacing, tearing, or destroying any book, periodical, map, newspaper or any property devoted to the public library shall be subject to punishment as provided in ' 35.01, and shall be ordered to replace or pay for the repair of the material destroyed.

(B) *Failure to pay fine; return.* Any person who fails to pay fines, pay for or return any book, periodical, map, newspaper, computer equipment, software, computer programs, or any property belonging to the public library within 15 days after written notice by the Village Attorney's office shall be subject to punishment as provided in Chapter 10 and shall be ordered to pay the library overdue fine and to replace the material if it has been lost or damaged.

(C) *Notice defined. NOTICE,* as used in division (B), is presumed to have been given when deposited as certified matter in the United States mail, addressed to the person at the address as it appears on his or her library card.

(Ord. 207, passed 1-20-04)

35.05 PROPERTY ACQUISITION AND DISPOSAL.

The Board shall develop policies covering the acceptance of books, media, equipment and other property donated to the library by members of the public and the disposal of surplus library books, media, equipment and property.

(A) *Donations.* As a general guideline, policies on the acceptance of books, media, equipment and other property donated by members of the public, the Board shall consider library needs and requirements and providing acknowledgment of the generosity of the donators of books and media.

(B) *Surplus material.* On a schedule developed by the Library Director, library material (books, media, equipment and property) shall be evaluated to identify books and media that are damaged, unserviceable and are duplicates; books and media demonstrating no interest to patrons; and, unserviceable equipment and other property. Such books, media, equipment and property shall be declared candidates for disposal by the library.

(C) *Disposal of surplus material.* The Library Board shall approve or disapprove the list of proposed surplus library material. Surplus library material (books, media, equipment and other property) shall be disposed of in accordance with applicable village ordinances, applicable state law, and accepted standard library property disposal practices in this state. Monies derived from the sale of surplus library property shall be deposited in the Village Library Fund for library operations.

(Ord. 207, passed 1-20-04)