

**LUNA COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**Linda M. Smrkovsky**  
**Chair**

**Barbara L. Reedy**  
**Member**

**John S. Sweetser**  
**Member**

**Monday, October 24, 2022  
2:00 p.m.  
Agenda  
Special Meeting  
Luna County Courthouse**

Meeting ID: [meet.google.com/gnf-hvkd-ugb](https://meet.google.com/gnf-hvkd-ugb) To dial in: 1 304-774-5099 PIN: 415 447 533#

1. **Call to Order:** Chair Linda Smrkovsky to commence meeting (At this time, please silence your cell phones and any other electronic devices) Pledge of Allegiance, State Pledge.
2. **Roll Call:**
3. **Approval of Agenda:**
4. **Public Comment:** The Public has the opportunity to provide comments at this time pertaining to items on the agenda only. Please be advised that this is not a question and answer period. Your comments specific to the agenda items will be limited to three minutes unless the Board of County Commissioners requests more information. The time limit and opportunity to speak is given in an effort to allow public input on business matters of the County to move the agenda forward in a prompt yet efficient manner. Comments will not be allowed on individual agenda items as they are discussed by the Commissioners during new business.
5. **Ordinance:**
  - a. Ordinance 53: Luna County Wireless Telecommunications  
**PUBLIC HEARING  
MOTION AND ROLL CALL VOTE**

**6. Old Business:**

- a. Resolution 22-77: Small wireless facility Design Guidelines  
**MOTION AND ROLL CALL VOTE**
- b. Resolution 22-78: Application for Sun State Towers to construct a 150' monopole at 130000 Silver City Highway  
**PUBLIC HEARING**  
**MOTION AND ROLL CALL VOTE**
- c. Amended Resolution 22-03: Notice of fees  
**MOTION AND ROLL CALL VOTE**
- d. Resolution 22-79: Authorizing the assignment of Official Representatives and Signatory Authorities  
**MOTION AND ROLL CALL VOTE**

**7. Discussion Items:**

- a. Luna County Personnel Ordinance No. 23  
**DISCUSSION ONLY**
- b. Increasing the size of the Board of County Commissioners to Five Members  
**DISCUSSION ONLY**

**8. Call for Ordinance:**

- a. Resolution 22-80: Call to Amend Ordinance 101; Procedure for Accepting Donations of Real Property  
**MOTION AND ROLL CALL VOTE**
- b. Resolution 22-81: Call to Amend Ordinance 23; Luna County  
**MOTION AND ROLL CALL VOTE**

**9. New Business:**

- a. Resolution 22 82: Local Emergency/ Disaster Declaration  
**MOTION AND ROLL CALL VOTE**

**10. Upcoming Meetings/ Events (unless otherwise specified):**

Regular Meeting: November 10 , 2022 at 10:00 a.m.  
Veterans Day: November 11, 2022 ; Luna County offices are closed  
Thanksgiving Holiday, November 23, 2022 ; Luna County offices close at noon  
Thanksgiving Holiday, November 24, 2022 ; Luna County Offices closed  
Personal Day, November 25, 2022 ; Luna County offices closed

**11. Adjourn:**

*Be it remembered that at a Special Meeting of the Board of County Commissioners of Luna County in Deming New Mexico, on the 24<sup>th</sup> day of October 2022, the following proceedings were had and entered of record.*

**LUNA COUNTY, NEW MEXICO  
ORDINANCE 53; SECOND AMENDMENT**

**AN ORDINANCE REGULATING THE SITING AND PERMITTING OF  
WIRELESS TELECOMMUNICATION FACILITIES**

**WHEREAS** Luna County has determined that the regulation of the siting of wireless telecommunications facilities is necessary to protect the health, safety and welfare of the citizens of Luna County;

**WHEREAS** Luna County desires to minimize the negative impact Wireless Telecommunications Facilities may have on the citizens and real property use in Luna County by promoting the use of existing Wireless Telecommunications Facilities and by ensuring new Wireless Telecommunications Facilities are compatible with the existing character and environment of the location of the Facility;

**WHEREAS** Luna County wishes to provide an efficient, stream-lined and fair process for the review and approval of potential Wireless Telecommunications Facilities;

**WHEREAS**, pursuant to NMSA 1978 §§ 3-21-1 et seq. and §§ 4-37-1 et seq., and the Telecommunications Act of 1996, §704.47 U.S.C. § 332(c)(7), § 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 and recognizing the enactment of the New Mexico Wireless Consumer Advanced Infrastructure Act NMSA 1978 §§ 63-91-1 et. seq., the Board of County Commissioners of Luna County is empowered to enact regulations regarding the location, placement, construction, appearance, design, and modification of Wireless Telecommunications Antennae, Towers and other Wireless Telecommunications Facilities on lands and properties within the County;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LUNA COUNTY, AS THE GOVERNING BODY OF LUNA COUNTY, NEW MEXICO, that the contents of this Ordinance No. 53 Revised be implemented REGULATING THE SITING AND PERMITTING OF WIRELESS TELECOMMUNICATION FACILITIES:**

Section 1. POLICY AND PROCEDURES

**I. PURPOSE AND INTENT:**

A. The purpose and intent of this Ordinance are to protect the health, safety, and welfare of the citizens of Luna County by minimizing the negative impact of Wireless Telecommunications Facilities, by establishing a fair and efficient process for review and approval of applications per Federal, State, and Local Regulations, by encouraging the use of existing facilities, by promoting the improved appearance and functionality of any new facilities and ensuring that all new facilities are constructed using current technologies that are designed to conceal the site and to accommodate future growth.

**II. DEFINITIONS:**

A. Abandonment – cessation of use of a wireless support structure for wireless

telecommunications activity for at least the minimum period specified by this Ordinance.

B. Administrative Approval – approval that the Administrator or designee is authorized to give.

C. Antenna – communications equipment that transmits, receives or transmits and receives electromagnetic radio signals used in the provisions of wireless telecommunications services.

D. Carrier on Wheels (COW) – a portable, self-contained wireless telecommunications facility that can be moved to a location and set up to provide wireless services on a temporary or emergency base.

E. Colocation – placement or installation of wireless facilities on existing structures, including electrical transmission towers, water towers, buildings, and other structures capable of supporting wireless facilities' attachment in compliance with all applicable codes and standards.

F. Concealed Wireless Facility – any wireless facility that is blended as an architectural feature of any existing structure or any new wireless support structure designed to camouflage or hide the presence of antennas or towers so that the purpose of the Facility or wireless support structure is not readily apparent to casual observation.

G. Eligible Facility request – a request for modification or colocation of an existing wireless tower that involves new transmission equipment or replacement of transmission equipment but does not include a substantial change of the existing structure.

H. Existing structure – a wireless support structure erected before the application for an eligible facility request, colocation, or modification under this Ordinance capable of supporting wireless facilities' attachment. The term includes but is not limited to electrical transmission towers, buildings, and water towers. The term shall not include any utility pole.

I. Set-back – the area in which a wireless support structure may be expected to fall in the event of a structural failure as defined by the Ordinance.

J. Small Wireless Facilities/Systems – One of several specialized systems that comprises mini-macro cells, Distributed Antenna Systems (DAS), or Wi-Fi Hot Spots specifically for outdoor coverage. Individual small cell sites typically cover a small radius (<2000'). However, they are used in conjunction with the "typical" cell sites or a group of other small cell sites, a system, to cover a broad area of dense usage requirements. These facilities' nature and character, their minimal impact, and typically permitted in quantity justify permitting considerations.

K. Tower – a structure, guided or freestanding, that supports one or more antenna.

L. Wireless Facility or wireless facilities – the set of equipment and network components exclusive of the underlying wireless support structure, including but not limited to antennas, accessory equipment, transmitters, receivers, base stations, power supplies, cabling, and associated equipment necessary to provide wireless

telecommunications services.

### **III. APPLICABILITY:**

A. This Ordinance applies to all construction and expansion of wireless telecommunications facilities, except as provided in III B Exemptions

B. Exemptions:

- Fire, police, department of transportation, or other public service facilities owned and operated by Luna County, local, state, or federal government.
- Any facilities expressly exempt from the jurisdiction's citing, building, and permitting authority.
- Over-the-Air reception devices, including the reception antennas for direct broadcast satellites (DBS), multi-channel, multipoint distribution (wireless cable) providers (MMDS), television broadcast stations (TVBS), and other customer-end antennas that receive and transmit fixed wireless signals and are primarily used for reception.
- Facilities exclusively for private, non-commercial radio and television reception and private citizen's bands, and other similar non-commercial telecommunications.
- FCC-licensed amateur radio facilities require Administrative Approval and are exempt from all ordinance requirements except reasonable screening, set-back, placement, construction, tower height, and health and safety standards per New Mexico state law.
- Facilities that exclusively provide unlicensed spread spectrum technologies (such as IEEE 802.11a/b/g/n/ac/ax {Wi-Fi and Bluetooth}) where the Facility does not require a new tower.

### **IV. PERMIT APPLICATION PROCESS AND OTHER REQUIREMENTS:**

A. All Applicants for Special Use Permits and Conditional Special Use Permits shall comply with the requirements outlined in this Article.

B. The Board of County Commissioners of Luna County designates the Luna County Planning Department (or other designee made by the County Manager) as the Administrator to whom applications for Special Use Permits and Conditional Special Use Permits must be made. The Administrator is authorized to review, analyze, evaluate, and make decisions with respect to granting, not granting, or revoking Permits.

C. The Applicant shall complete the following steps to assist the Administrator in expediting the completion of the process:

- Optional Pre-Application Conference: At the Administrator's discretion, applicants seeking a Telecommunications Permit will obtain and review this

Ordinance and meet with the Administrator, either electronically or in person, before submitting an application. Typically called for on more complex applications (new towers, 5G, etc), the meeting intends to review the ordinance requirements, processes, and method of submission with the Applicant. The pre-application session may include the following:

a) A discussion of potential best locations for the Telecommunications Facility, taking into consideration Luna County's defined priorities that meet the Applicant's requirements for service. The application process may require an explanation for a selected location not using the highest priority available to the Applicant. Luna County's priorities (listed from highest to lowest) are:

(1) On existing Towers or structures without increasing their height.

(2) On Luna County-owned properties.

(3) On properties zoned, or if not zoned, characterized predominantly by Industrial use.

(4) On properties zoned, or if not zoned, characterized predominantly by Commercial use.

(5) On properties zoned, or if not zoned, characterized predominantly by Residential use.

b) A discussion of issues to help expedite the review and permitting process;

c) A site visit to potential best location sites, if deemed necessary by the Administrator;

d) A determination of the type of application to be made;

e) A discussion of the defined information required to support the proposed location;

f) A discussion of the specific application requirements that are needed for review and consideration by the Administrator. Requirements for the Application may vary based on the specific location, type of facility selected, and the potential impact to Luna County and its citizens, and;

g) Any applicant desiring relief, waiver, or exemption from any Ordinance requirement may request such at the pre-application meeting. The burden of proving the need for the request lies solely with the Applicant. No request shall be approved unless the Applicant provides convincing evidence that the request will have no significant effect on the health, safety, and welfare of Luna County or its residents.

- Application Process: The Applicant shall complete the on-line application processes as defined by the Administrator at the outset of the process.

a) **All applications shall contain** a demonstration that the Telecommunications facility will be sited to be the least visually intrusive,

as reasonably possible.

b) In addition to demonstrating that the proposed modification, colocation, eligible facility, or new tower or telecommunications facility blends into the character and environment of the proposed location, **all applications shall contain** the following information and shall be submitted through the on-line system designated by Luna County:

- (1) Registration of an Agent, including the name, address, and telephone numbers of the designated Agent and his/her company;
- (2) Authorization of the Agent as an official and representative of the Applicant; then pending approval;
- (3) Complete a project description which shall include a general description of the Applicant's project and its proposed location;
- (4) Contact information including the name, address, and telephone number of the person or entity who will be responsible for the Applicant's construction and management of the project;
- (5) Contact information for the support structure project manager for the proposed location and contact information for any manager of the real property for the proposed site (e.g., building manager, tower owner);
- (6) Define the type of project (colocation, modification, new tower, etc.), and the specific site address and description of the project.
- (7) Completing a Tower/Wireless Facility Registration or, if a Tower/Wireless Facility Registration already exists for the proposed location, completing a Tower/Wireless Facility Registration Update, if needed. The Tower/Wireless Facility Registration shall include;

- (a) Name, address, and telephone contact number for the tower owner;
- (b) Name, address, and telephone contact number for the real property owner, if different than tower owner;
- (c) Current number and identification of co-locators on the tower/facility;
- (d) Site name, number, and physical address;
- (e) Documentation and specifics regarding the agreement terms (other than financial) demonstrating Applicant's right, title, or interest in the real property where the facility is to be sited, including the name, address, and phone number of the property owner;
- (f) Description of the tower/facility, including but not limited to height, set back, type of structure, and the number of existing co-locators;
- (g) Verifiable copy of the current tower inspection report using ANSI/TIA-222-G (or newer), including the expiration date, the company performing inspection, and ANSI standard used;
- (h) Contact information including name, address, and

telephone number for the person or entity performing the most recent or current tower inspection;

(i) A copy of the Soils Study Report including but not limited to the date completed, person or entity name performing the Soils Study, project number, identification of the Professional Engineer providing certification of the study with New Mexico registration or license number of the Professional Engineer, and;

(j) Any other information deemed necessary or required by Luna County.

**c) Applications for a modification, colocation, or eligible Facility to an existing structure, without an increase of height or size, shall include:**

(1) All items listed in Section b. above which do not exist or are no longer current or have not recently been updated;

(2) Project name for the existing colocation site or project;

(3) Names, addresses, and phone numbers of person or entity preparing the application;

(4) A copy of the FCC license for the carrier and a signed statement from the owner or operator of the Facility attesting that the Facility complies with current FCC regulations;

(5) Certified Site Plans using ANSI/TIA-222-G (or newer), including the Professional Engineer's name and New Mexico registration/license number, physical description of the current configuration of the site, physical description of the proposed design of the site, contacts, set-backs, grounding plans, security, parking, turnarounds, description of the components including the sizes of the components to determine that the proposal is the least visibly intrusive design;

(6) Certified Structural Analysis using ANSI/TIA-222-G (or newer), including identification of the Professional Engineer's name and registration/license number providing the Analysis, a copy of all calculations, reference documents and results, percent loading, that include all components, structures, and foundations per Rigorous Standards. Loading may not exceed 100%.

(7) Performance Bond including amounts as set by Luna County, to remain in place as long as the site remains active and in place and until the tower or facilities are removed as required by the Ordinance;

(8) Copy of the Certificate of Insurance demonstrating the requirements of the Ordinance;

(9) Identification of the general contractor(s) with proof of current Luna County licensure as required by the State of New Mexico, and;

(10) Projected start and completion dates of construction.

**d) Applications to install a new tower or telecommunications**



**facility will include the following:**

- (1) All information listed in Sections b. and c. above;
- (2) The number, type, and design of the tower(s) and antenna(s) proposed;
- (3) All reports, data, calculation, and design criteria which demonstrate the tower's capability to accommodate multiple users;
- (4) Demonstration of the Applicant's meaningful efforts to secure shared use of existing tower(s) or other structures within the defined parameter of one (1) mile including but not limited to copies of written requests and responses for shared use;
- (5) The new wireless Facility justification includes capacity information, the gap in coverage information, or other information demonstrating rationale for the application;
- (6) The Applicant will obtain a list of property owners and nearby home owner associations, to include their addresses, within fifteen hundred (1500') of the proposed site's property lines. This list of owners and addresses must be submitted early in the application process so specific notice of any needed or required hearing can be given to them at least 7 days prior to any needed or required hearing.
- (7) Public Hearing and Notification Requirements:
  - (a) In order that the County may notify nearby landowners, prior to the approval of any Application for a Telecommunications Permit for a New Tower, a public hearing shall be held by the County, notice of which shall be published in accordance with the New Mexico Open Meetings Act, and the annual Luna County Notice of Meetings Resolution, which sets the notice and type of publication for meetings, prior to the scheduled date of the public hearing.
  - (b) The County shall schedule the public hearing referred to in Subsection (a) of this section once it finds the Application is complete. The County, at any stage prior to issuing a Telecommunications Permit, may require such additional information as it deems necessary.
  - (c) All Public Hearings pursuant to this Ordinance are to be held before the Board of County Commissioners of Luna County unless specifically exempted by this Ordinance; and, for any appeal purposes, the decision of the Board of County Commissioners of Luna County is the final decision of the County.

e) **Applications to Install Small Wireless Facilities/Systems will include the following:** (Note: A special meeting with the agents/engineers/representatives of the Applicant may be needed to ensure that systems documentation requirements are fully understood.) Luna County's defined Small Wireless Facilities design requirements are made available to applicants by the Administrator in the Small Wireless Facility Design Guidelines Resolution.

- (1) All information listed in Sections b. c. & d. above;
  - (2) The entire system and any associated groups of Small Wireless facilities, within limits defined by the on-line application, may be included in a single application process.
  - (3) Each component of the system must be represented in the on-line Application Process.
  - (4) Each system's unique components must be shown and include all the relevant data to complete the process. However, all like (virtually identical) nodes may be demonstrated once but must consist of all the physical locations for each node.
- **Review of Application:** The Administrator and the consultant(s) shall review the application within thirty (30) days of submission to determine if the application is complete and meets the Ordinance requirements. Luna County and the Applicant can, by a mutual written agreement, extend the period in which the review for completeness is conducted.
    - a) Incomplete applications will not be accepted for further review and processing;
    - b) Applications submitted without the payment of costs and fees as required by Luna County are incomplete and shall not be accepted for further review and processing;
    - c) **IF THE APPLICATION IS NOT COMPLETE:**  
Luna County shall notify the Applicant in writing or via email of the provisions of the code, Ordinance, application process, or publicly stated procedures that were not completed and inform the Applicant that the application may be resubmitted.
    - d) **IF A RESUBMITTED APPLICATION IS NOT COMPLETE:**  
Within ten (10) days of the resubmission of the application, Luna County shall notify the Applicant in writing or via email of whether the resubmission is complete and that the application may be resubmitted, and inform the Applicant of the code, Ordinance, application process or publicly stated procedures which remain incomplete.
    - e) **IF THE APPLICATION IS COMPLETE** and based on the review of the application, the Administrator shall, within the periods allowed under federal, state, and local law:
      - (1) Approve, approve with conditions or deny a Special Use or Conditional Special Use Permit;
      - (2) Issue a written decision within ten (10) days of deciding on the application, which is supported by evidence contained in the on-line information and records submitted by the Applicant;
      - (3) Place the burden of proof for the granting of the Permit upon the Applicant;
      - (4) Refer the application to the Board of County Commissioners of Luna County for review and consideration; once a variance or waiver is obtained or granted, the Administrator may request the Applicant update the application if the Administrator deems it necessary to complete the application process.

- Public Hearing and Appeal of Administrator's Decision: The decision of the Administrator can be appealed by the Applicant or by Luna County by submitting written notification to the Administrator. The Notice of Appeal's content shall contain the Applicant's name and a description of the Wireless Telecommunications Facilities. The Applicant must submit the Notice of Appeal within 30 calendar days after the decision.
  - a) The hearing or appeal will be heard and considered at the next available meeting of the Board of Commissioners
  - b) For any application or appeal which is to be presented to the Board of County Commissioners of Luna County, the County Administrator must have all documentation prior to the time of the meeting to ensure that all proper notices can be sent out in a timely matter.
- Construction of the Proposed Facility: If an application is approved or approved with conditions, a Special Use or Conditional Special Use Permit will be issued to the Applicant:
  - a) The Applicant must comply with all requirements of the Special Use or Conditional Special Use Permit;
  - b) The Applicant will be required to meet and satisfy all building inspection processes generally needed for a construction project;
  - c) The Special Use or Conditional Special Use Permit shall not be assigned, transferred, or conveyed without written notification to and approval from Luna County within six (6) months;
  - d) The Special Use or Conditional Special Use Permit may be revoked, canceled, or terminated for violation of the Permit's conditions and provisions or for a material breach of this Ordinance as permitted by local Ordinance, state, and federal law;
  - e) Luna County will provide the permit holder written notice of an intent to revoke, cancel or terminate the Permit with identification of the violation(s) and give the holder of the Special Use or Conditional Special Use Permit with an opportunity for a hearing before the Board of County Commissioners of Luna County before revocation, cancellation or termination.
- Completion of Construction: When the Applicant completes the project's construction, the Applicant shall notify the Administrator of the need for a final inspection. Luna County or the consultant for Luna County will verify that the site is constructed in accordance with the application, meets all the requirements of the Ordinance, and that the applicant has paid all monies due to Luna County. If all requirements of this Ordinance and the Special Use or Conditional Special Use Permit have been met, Luna County will issue a Certificate of Compliance to the Applicant that allows operational use of the site.

## **V. GENERAL REQUIREMENTS OF WIRELESS TELECOMMUNICATIONS FACILITIES:**

- A. Lighting: Telecommunications facilities shall not be lighted or marked unless required by law. If lighting is needed, Applicant shall provide a detailed plan for sufficient

lighting as inoffensive as permissible under State and Federal regulations. The Applicant shall also comply with any local or State "Night Skies" requirements.

B. Materials: Towers shall be galvanized or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained for the Tower's life.

C. Set-back Requirements: Stand-alone Wireless Telecommunications Facilities shall be no closer to any property line than the total height of the completed unit, plus ten percent (10%). The structure should not be capable of falling onto an adjacent property or building should the Facility collapse for any reason. The height is measured from the pre-existing grade to the highest point of the structure.

D. Security of Wireless Telecommunications Facilities: All Wireless Telecommunications Facilities and Antennas shall be located, fenced, or otherwise secured in a manner that prevents unauthorized access.

E. Signage: Telecommunications Facilities shall contain a sign to provide adequate notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area. A sign of the same size shall also be installed to contain the site identification number and emergency phone number(s). The sign shall be on the fence, equipment shelter, or cabinet and be visible from an access point outside the secured site area. On tower sites, an FCC registration sign shall also be present. The signs shall not be lighted unless required by law, rule, or regulation. No other signage, including advertising, shall be permitted.

F. Update of Signage: The Applicant or future owner of the site shall update the site identification number and emergency phone numbers of the Wireless Telecommunications Facility as displayed on the required sign within one month of any sale, assignment, or transfer.

G. Temporary Communications on Wheels (COW): In the event of an emergency or natural disaster which renders other forms of communication nonviable, thus necessitating a COW, Luna County and the Telecommunications provider shall agree to special terms and conditions as needed by Luna County and the Telecommunications provider:

- If a COW becomes inoperable due to force majeure or Acts of God, it must be removed from the site within 30 days of becoming unusable.
- Regarding a special event where a COW is used, it must be removed from the site within 48 hours of the conclusion of the event.

## **VI. APPLICATION FEES and OTHER REQUIREMENTS:**

A. At the time a person applies for a Special Use or Conditional Special Use Permit for a new Tower or requires an increase in height to an existing Tower or for colocating on an existing Tower or other suitable structure, where no increase will occur in the height of the Tower or other appropriate structure, such Applicant shall pay a non-refundable application fee to Luna County.

B. In addition to the application fee, Luna County may retain the services of an expert

consultant in connection with the processing and/or review of the application and the permitting and final inspection of site. The Applicant shall be responsible for reimbursing Luna County for all costs and amounts incurred by Luna County for such expert consultation.

C. The Applicant shall pay for the projected consultation costs to Luna County at the time of the application.

D. An application is incomplete until the Application Fee is paid, and the Applicant has paid the costs for the expert consultant.

E. The consultant shall provide Luna County with an invoice for the costs of the consultation. The amount invoiced by the consultant will be assessed to the Applicant as the Application Processing and Review Fee.

F. The Application Fees and Costs are defined by the Notice of Fees Resolution associated with this Ordinance; adopted, amended or replaced from time to time as the County Commission determines.

G. The Applicant, Luna County, and the consultant will comply with all state and local requirements concerning payment of the consultant's fees.

H. The Applicant and the owner of record of any proposed Wireless Telecommunications Facilities property site shall, at their cost and expense, be jointly required to execute and file with Luna County a bond, or other form of security acceptable to Luna County in at least the following amounts:

- Colocation or modification of an existing tower: \$25,000
- Small wireless facility: \$15,000
- New tower or other structure: \$75,000

Such sureties are deemed sufficient by Luna County to assure the faithful performance of the terms and conditions of this Ordinance and conditions of any Telecommunications Permit or Conditional Use Permit issued according to this Ordinance. The full amount of the bond or security shall remain in full force and effect throughout the term of the Telecommunications Permit, and any Conditional Use Permit has been fulfilled, and until any necessary site restoration is completed to restore the site to a condition comparable to that which existed before the issuance of the original Special Use or Conditional Special Use Permit.

I. A holder of a Special Use or Conditional Special Use Permit shall secure and at all times maintain public liability insurance for personal injuries, death, and property damage and umbrella insurance coverage for the duration of the Permit in amounts as set forth below:

- Commercial General Liability covering personal injuries, death, and property damage: \$1,000,000.00 per occurrence/\$2,000,000.00 aggregate;
- Automobile Coverage: \$1,000,000.00 per occurrence/\$2,000,000.00 aggregate;
- Workers Compensation and Disability: Amount required by New Mexico state

- law;
- Commercial General liability insurance policy shall specifically include Luna County and its officers, employees, agents, and consultants as additional named insureds;
- Insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state and with a "Best's" rating of at least A;
- Insurance policies shall contain an endorsement obligating the insurance company to furnish Luna County with at least thirty (30) days prior written notice of the cancellation of the insurance;
- Renewal or replacement policies or certificates shall be delivered to Luna County at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace;
- The Permit Holder shall provide Luna County a copy of the policies/certificates before construction and upon written request by Luna County.

## **VII. REMOVAL OF TOWER/ANTENNA/REVOCATION/DEFAULT:**

A. Cessation of Operations/Abandonment/Disrepair: Luna County may require the removal of a Telecommunications Facility(ies) when: such item(s) with a permit have been abandoned or operations of Telecommunications Facility has ceased for a period exceeding ninety (90) consecutive days or a total of one hundred eighty (180) calendar days. All items and equipment subject to the Telecommunications Permit shall be removed within ninety (90) days of abandonment or the cessation of operations. If equipment or items subject to the Telecommunications Permit, fall into such disrepair that a health or safety hazard is created as determined according to a review by a State licensed engineer and such item are not repaired within sixty (60) days, or longer as necessary upon the permit holder demonstrating that despite good faith efforts, such disrepair could not be responsibly cured within the provided time, Luna County may require the removal of the item of the Telecommunications Facility.

B. Modification, location, or construction without Permit: If any equipment or item has been located, constructed, or modified without a permit, or in a manner inconsistent with the approved permit requirements, and the Facilities have been located, constructed, or modified without first obtaining, or in a way not authorized by the required Permit or any other necessary authorization, Luna County may require the removal of the item, equipment or the Telecommunications Facility.

C. Lack of Insurance: If a Permit holder has failed to comply with the liability insurance requirements required by Luna County, Luna County may require the removal of the item, equipment or the Telecommunications Facility.

D. Notification of Violation: If Telecommunications Facilities are repaired, rebuilt, placed, moved, relocated, modified, or maintained in a way not in compliance with this Ordinance or the Telecommunication Permit or the Conditional Use Permit, Luna County shall notify the Permit holder in writing of such violation. If the makes such a determination that removal of an item, equipment or Telecommunications Facility is required, then Luna County shall notify the Permit holder within forty-eight (48) hours that said items are to be removed. Luna County may approve an interim temporary use

agreement/permit, such as to enable the removal and/or sale of the item.

E. Failure to Cure: After receiving notice of a violation, the permit holder shall have ninety (90) calendar days to cure or remove the violation. Luna County shall extend such cure period as necessary upon the Permit holder demonstrating that despite good faith efforts, such default cannot be reasonably cured.

E. Failure to Cure (Removal of an item, equipment, or Telecommunications Facility is not required): For all violations other than a violation which requires removal of an item, equipment, or Telecommunications Facility, a Permit holder has thirty (30) days to cure such violation(s) after notice has been mailed or delivered to the Permit holder's address of record. Luna County may extend the cure period upon demonstration that the Permit holder has made good faith efforts to cure and that despite its good faith efforts, such default cannot be reasonably cured within the provided time.

F. Failure to Cure (Removal of the item, equipment, or (Telecommunications Facility is required): If the permit holder cannot cure the violation that involves removal of an item, equipment, or Telecommunications Facility within the cure period, the permit holder shall dismantle and remove such item, and any associated structures, from the site and restore the site to as close to its original condition as possible, reasonable wear and tear excepted, within ninety (90) days of the expiration of the cure period.

G. Removal by Luna County: If the item, equipment or Telecommunications Facility is not removed or substantial progress has not been made to remove it within ninety (90) days of the permit holder receiving notice, then Luna County may order officials or representatives of Luna County to remove the item at the sole expense of the owner or Permit holder.

H. Sale upon Abandonment: If Luna County removes or causes to be removed the item, and the owner does not claim and remove it from the site to a lawful location within one hundred twenty (120) days, then Luna County may take steps to declare the item abandoned, and sell it and its components.

I. Temporary Use Permit/Agreement: Notwithstanding anything in this Section to the contrary, Luna County may approve an interim use permit/agreement for the item for no more than ninety (90) days, during which time a suitable plan for removal, conversion or re-location of the affected item shall be developed by the holder of the Permit, subject to the approval of Luna County, and an agreement to such plan shall be executed by the holder of the Permit and Luna County. In the case that such a plan is not developed, approved, and completed within the ninety (90) day time period, Luna County may take possession of and dispose of the affected item in the manner provided in this Section.

J. Emergency Removal: If Luna County determines the item is hazardous, creates an emergency situation, or adversely affects public safety, Luna County may remove or cause to be removed the item after three (3) days written notice to the Permit holder or the holder of the Certificate of Compliance.

K. Failure to Cure: A Permit holder still in violation after the expiration of the cure period may be considered in default, subject to fines as outlined in this Ordinance, and the

Permit is subject to revocation.

L. Fines: A Permit holder who violates this Ordinance may be fined up to \$500 for each violation, and each day that a violation exists shall be deemed to be a separate violation.

#### Section 2. REPEALER

All ordinances or parts of ordinances in conflict or inconsistent herewith are hereby repealed to the extent of such inconsistency. Specifically, Ordinance No. 53 Revised is hereby repealed and replaced with this Ordinance No. 53; Second Amendment. This repealer shall not be construed to revive any ordinance or part of any ordinance regarding the same subject matter heretofore repealed.

#### Section 3. SAVINGS CLAUSE

If any section, paragraph, clause, or provision of this Ordinance for any reason shall be held to be invalid or unenforceable, the invalidity or unenforceability of such Section, paragraph, clause, or provision shall not affect any other part of this Ordinance.

#### Section 4. EFFECTIVE DATE

All County Ordinances, immediately after their passage, shall be recorded and authenticated in the Clerk's office and shall take effect 30 days after the recording. Notwithstanding this provision, when a Board of County Commissioners declares that it is necessary for the public peace, health and safety that an Ordinance shall take effect immediately after passage, that Ordinance shall take effect immediately upon recording.

**DONE THIS 24<sup>TH</sup> DAY OF OCTOBER, 2022**

**BY THE BOARD OF COUNTY COMMISSIONERS OF  
LUNA COUNTY, STATE OF NEW MEXICO**

**ATTEST:**

\_\_\_\_\_  
**Barbara L. Reedy,  
Commissioner, District 1**

\_\_\_\_\_  
**Berenda McWright, County Clerk**

\_\_\_\_\_  
**Linda M. Smrkovsky, Chairperson  
Commissioner, District 2**

\_\_\_\_\_  
**John S. Sweetser,  
Commissioner, District 3**



*Be it remembered that at a Special meeting of the Luna County Board of County Commissioners in Deming New Mexico, on 24th day of October, 2022, the following proceedings were had and entered of record.*

**RESOLUTION #22-77**  
**SMALL WIRELESS FACILITY DESIGN GUIDELINES RESOLUTION**

**WHEREAS,** The Board of County Commissioners of Luna County has adopted Ordinance 53; Second Amendment; which directs that a resolution be adopted providing Small Wireless Facilities Design Guidelines, and allows that resolution to be changed from time to time; and,

**WHEREAS,** The Board of County Commissioners of Luna County desires to exercise its authority to establish Small Wireless Facility Design Guidelines; and

**NOW, THEREFORE, BE IT RESOLVED:**

**Background**

On September 27, 2018, the FCC released a Declaratory Ruling and Third Report and Order (hereinafter “Small Cell Order” or “FCC Order”) that significantly limits local authority over small wireless infrastructure deployment and fees for use of the rights-of-way (“ROW”). The FCC Order took effect on January 14, 2019. However, the requirements regarding aesthetics did not take effect until April 15, 2019. Under the FCC Order, aesthetic or “design standards” must be: (1) reasonable; (2) no more burdensome than those applied to other types of infrastructure deployments; (3) objective; and (4) published in advance. The FCC Order also defines the size limitations for small wireless facilities (allowing antennas of up to 3 cubic feet each, with additional equipment not to exceed 28 cubic feet) and specifies that such facilities may not result in human exposure to radiofrequency radiation in excess of applicable standards in the FCC’s rules (federal law preempts local regulation of RF emissions the 9<sup>th</sup> Circuit Court of Appeals, in *City of Portland v. FCC*, No. 18-72689 (9th Cir. 2020). Invalidated the Small Cell Order’s specific requirements for design standards. However, to manage the deployment of small wireless facilities more efficiently (commonly referred to as “small cells”) in the ROW, it is recommended that municipalities adopt some form of written design standards.

**Small Wireless Facilities Design Standard**

The Wireless Facilities Ordinance and these “SWF Design Standards” are intended to be paired together.

There is no single design standard that will work for every situation. As such, the design standard is intended as a roadmap to assist local governments and wireless carriers deploying small wireless facilities to use optimal designs that preserve the nature and character of the community being served.

## **Additional Considerations**

Design standards only applies to small wireless facilities. A utility-neutral standard covering all utilities and communications providers provides one set of “rules” for the design of the public rights-of-way.

**Definitions:** These definitions are applicable to all applications filed and qualifying as a Small Wireless Facility.

“**Antenna**” means the same as defined in 47 C.F.R. § 1.6002(b), as may be amended or superseded. The term includes an apparatus designed for the purpose of emitting radio frequencies (RF) to be operated or operating from a fixed location pursuant to Federal Communications Commission authorization, for the provision of personal wireless service and any commingled information services.

“**Antenna Equipment**” means the same as defined 47 C.F.R. § 1.6002(c), as may be amended or superseded, which defines the term to mean equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and when collocated on a structure, is mounted or installed at the same time as such antenna.

“**Antenna Facility**” means the same as defined in 47 C.F.R. § 1.6002(d), as may be amended or superseded, which defines the term to mean an antenna and associated antenna equipment.

“**Applicable codes**” means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or state or local amendments to those codes that are of general application and consistent with state and federal law.

“**Applicant**” means any person who submits an application as, or on behalf of, a wireless provider.

“**Application**” means requests submitted by an applicant (1) for permission to collocate small wireless facilities; or (2) to approve the installation, modification or replacement of a structure on which to collocate a small wireless facility in the rights-of-way, where required.

“**Collocate**” means the same as defined in 47 C.F.R. § 1.6002(g), as may be amended or superseded, which defines that term to mean (1) mounting or installing an antenna facility on a preexisting structure, and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure. “Collocation” has a corresponding meaning.

“**Day**” means calendar day. For purposes of the FCC shot clock, a terminal day that falls on a holiday or weekend shall be deemed to be the next immediate business day.

**“Historic District”** means a group of buildings, properties, or sites that are either: (1) listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register in accordance with Section VI.D.1a.i-v of the Nationwide Programmatic Agreement codified or (2) a locally designated historic districts effective at the date of this or in a locally designated historic district existing when an application is submitted.

**“Person”** means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the Jurisdiction.

**“Pole”** means a type of structure in the rights-of-way that is or may be used in whole or in part by or for wireline communications, electric distribution, lighting, traffic control, signage, or similar function, or for collocation of small wireless facilities; provided, such term does not include a tower, building or electric transmission structures.

**“Rights-of-Way” or “ROW”** means examples: “Right-of-way,” “rights-of-way,” “public right-of-way,” or “ROW” means and includes, but is not limited to, the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges, trails, paths, sidewalks, bicycle lanes, public utility easements and all other public ways or areas, including the subsurface under and air space over these areas, but does not include parks, parkland, or other Jurisdiction property not generally open to the public for travel.]

**“Small wireless facility”** means a facility that meets each of the following conditions per 47 C.F.R § 1.6002(*l*), as may be amended or superseded:

1. The proposed facilities meet one of the following height parameters:
  - a. are mounted on structures 50 feet or less in height including their antennas as defined in 47 C.F.R. Section 1.1320(d), or
  - b. are mounted on structures no more than 10 percent taller than other adjacent structures, or
  - c. do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater.
2. Each antenna or antenna enclosure shall not exceed three cubic feet in volume.
3. The total volume of installed equipment external to the pole (including, but not limited to cabinets, vaults, boxes) shall not exceed twenty-eight (28) cubic feet. This maximum applies to all equipment installed at the time of original application and includes any equipment to be installed at a future date. Antennas and antenna enclosures are excluded. If equipment exceeds this maximum, the installation will be redefined as a Macro site installation and all the associated standards and rates for Macro installations will be applied.
4. The facilities do not result in human exposure to radio frequency radiation in excess of the applicable safety standards specified in the FCC’s Rules and

Regulations [47 C.F.R. section 1.1307(b)].

“**Structure**” means the same as provided in 47 C.F.R. § 1.6002(m), as may be superseded or amended, which defines the term as a pole, tower, base station, or structure, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of service).

**A. General Requirements.**

1. Ground-mounted equipment in the right-of-way is discouraged, unless the applicant can demonstrate that pole-mounted equipment is not technically feasible, or the electric utility requires placement of equipment on the ground (such as an electric meter). If ground-mounted equipment is necessary, then the applicant shall conceal the equipment in a cabinet, in street furniture or with landscaping.
2. Replacement poles, new poles and all antenna equipment shall comply with the Americans with Disabilities Act (“ADA”), city construction and sidewalk clearance standards and Luna County, New Mexico and federal laws and regulations in order to provide a clear and safe passage within, through and across the right-of-way. Further, the location of any replacement pole, new pole, and/or antenna equipment must comply with applicable traffic requirements, not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices), and not adversely affect public health, safety or welfare.
3. Replacement poles shall be located as near as feasible to the existing pole. The abandoned pole must be removed within 90 days.
4. Any replacement pole shall substantially conform to the material and design of the existing pole or adjacent poles located within the contiguous right-of-way unless a different design is requested and approved pursuant to Section I.
5. No advertising, branding or other signage is allowed unless approved by the Luna County Administrator as a concealment technique or as follows:
  - a. Safety signage as required by applicable laws, regulations, and standards; and,
  - b. Identifying information and 24-hour emergency telephone number (such as the telephone number for the carrier’s network operations center) on wireless equipment in an area that is visible.
6. The total volume of multiple antennas on one structure shall not exceed fifteen (15) cubic feet, unless additional antenna volume is requested and approved pursuant to Section I.
7. Antennas and antenna equipment shall not be illuminated except as required by municipal, federal or state authority, provided this shall not preclude deployment on a new or replacement streetlight.
8. Small wireless facilities may not displace any existing street tree or landscape features unless:
  - a. such displaced street tree or landscaping is replaced with native and/or drought-

- resistant trees, plants or other landscape features approved by the Jurisdiction, and
- b. the applicant submits and adheres to a landscape maintenance plan or agrees to pay an appropriate in-lieu fee for the maintenance costs.

**B. Small Wireless Facilities Attached to Wooden Poles and Non-Wooden Poles with Overhead Lines.** Small wireless facilities located on wooden utility poles and non-wooden utility poles with overhead lines shall conform to the following design criteria unless a deviation is requested and approved pursuant to Section I:

1. Proposed antenna and related equipment shall meet:
  - a. The Jurisdiction's design standards for small wireless facilities.
  - b. The pole owner's requirements; and
  - c. National Electric Safety Code ("NESC") and National Electric Code("NEC") standards.
2. The pole at the proposed location may be replaced with a taller pole or extended for the purpose of accommodating a small wireless facility; provided that the replacement or extended pole, together with any small wireless facility, does not exceed 40 feet in height or 10 percent taller than the tallest pole in a 1000ft radius, whichever is shorter. The replacement or extended pole height may be increased if required by the pole owner, and such height increase is the minimum necessary to provide sufficient separation and/or clearance from electrical and wireline facilities. Such replacement poles must either match the approximate color and materials of the replaced pole or shall be the standard new pole used by the pole owner in the Jurisdiction.
3. To the extent technically feasible, antennas, equipment enclosures, and all ancillary equipment, boxes, and conduit shall match the approximate material and design of the surface of the pole or existing equipment on which they are attached or adjacent poles located within the contiguous right-of-way. Near matches may be permitted by the Jurisdiction when options are limited by technical feasibility considerations, such as when high-frequency antennas cannot be placed within an opaque shroud but could be wrapped with a tinted film.
4. Antennas that are mounted on poles shall be mounted as close to the pole as technically feasible and allowed by the pole owner.
5. No antenna shall extend horizontally more than 20 inches past the outermost mounting point (where the mounting hardware connects to the antenna), unless additional antenna space is requested and approved pursuant to Section I.
6. Antenna equipment, including but not limited to radios, cables, associated shrouding, disconnect boxes, meters, microwaves and conduit, which is mounted on poles shall be mounted as close to the pole as technically feasible and as permitted by the pole owner.

7. Antenna equipment for small wireless facilities must be attached to the pole, unless otherwise required by the pole owner or permitted to be ground-mounted [pursuant to subsection (B)(1) above]. The equipment must be placed in an enclosure reasonably related in size to the intended purpose of the facility.
8. All cables and wiring shall be covered by conduits and cabinets to the extent that it is technically feasible, if allowed by pole owner. The number of conduits shall be minimized to the extent technically feasible.

**C. Small Wireless Facilities Attached to Non-Wooden Light Poles and Non-Wooden Utility Poles without Overhead Utility Lines.** Small wireless facilities attached to existing or replacement non-wooden light poles and non-wooden utility poles without overhead lines shall conform to the following design criteria unless a deviation is requested and approved pursuant to Section I:

1. **External Equipment.** The antennas and associated equipment enclosures must be camouflaged to appear as an integral part of the pole or be mounted as close to the pole as feasible and must be reasonably related in size to the intended purpose of the facility and reasonable expansion for future frequencies and/or technologies, not to exceed the volumetric requirements described in Section A. If the equipment enclosure(s) is mounted on the exterior of the pole, the applicant is encouraged to place the equipment enclosure(s) behind any decorations, banners or signs that may be on the pole. Conduit and fiber must be fully concealed within the pole.
2. **Concealed Equipment.** All equipment (excluding disconnect switches), conduit and fiber must be fully concealed within the pole. The antennas must be camouflaged to appear as an integral part of the pole or be mounted as close to the pole as feasible.
3. Any replacement pole shall substantially conform to the material and design of the existing pole or adjacent poles located within the contiguous right-of-way unless a different design is requested and approved pursuant to Section I.
4. The height of any replacement pole may not extend more than 10 feet above the height of the existing pole unless such further height increase is required in writing by the pole owner.

**D. New Poles.** Small wireless facilities may be attached to new poles that are not replacement poles under sections C or D, installed by the wireless provider, subject to the following criteria:

1. Antennas, antenna equipment and associated equipment enclosures (excluding disconnect switches), conduit and fiber shall be fully concealed within the structure. If such concealment is not technically feasible, or is incompatible with the pole design,
2. then the antennas and associated equipment enclosures must be camouflaged to appear as an integral part of the structure or mounted as close to the pole as feasible and must be reasonably related in size to the intended purpose of the facility, not to exceed the volumetric requirements in Section (A)(3).
3. To the extent technically feasible, all new poles and pole-mounted antennas and

equipment shall substantially conform to the material and design of adjacent poles located within the contiguous right-of-way unless a different design is requested and approved pursuant to Section I.

4. New poles shall be no more than forty (40) feet in height unless additional height is requested and approved pursuant to Section I.
5. The Jurisdiction prefers that wireless providers install small wireless facilities on existing or replacement poles instead of installing new poles, unless the wireless provider can document that installation on an existing or replacement pole is not technically feasible or otherwise not possible (due to a lack of owner authorization, safety considerations, or other reasons acceptable to the Luna County Administrator).

#### **E. Undergrounding Requirements.**

*This Section intentionally left blank.*

#### **F. Historic District Requirements.**

Small wireless facilities or poles to support collocation of small wireless facilities located in Historic Districts shall be designed to have a similar appearance, including material and design elements, if technically feasible, of other poles in the rights-of-way within 500 feet of the proposed installation. Any such design or concealment measures may not be considered part of the small wireless facility for purpose of the size restrictions in the definition of small wireless facility.

#### **G. Strand Mounted Equipment.** Strand mounted small wireless facilities are permitted, subject to the following criteria:

1. Each strand mounted antenna shall not exceed 3 cubic feet in volume, unless a deviation is requested and approved pursuant to Section I.
2. Only 2 strand mounted antennas are permitted between any two existing poles.
3. Strand mounted devices shall be placed as close as possible to the nearest pole and in no event more than five feet from the pole unless a greater distance is required by the pole owner.
4. No strand mounted device will be located in or above the portion of the roadway open to vehicular traffic.
5. Strand mounted devices must be installed with the minimum excess exterior cabling or wires (other than original strand) to meet the technological needs of the facility.

#### **H. Deviation from Design Standards.**

1. An applicant may obtain a deviation from these design standards if compliance with the standard: (a) is not technically feasible; (b) impedes the effective operation of the small wireless facility; (c) impairs a desired network performance objective; (d)

conflicts with pole owner requirements; or (e) otherwise materially inhibits or limits the provision of wireless service.

2. When requests for deviation are sought under subsections (I)(1)(a)-(e), the request must be narrowly tailored to minimize deviation from the requirements of these design standards, and the Luna County Administrator must find the applicant's proposed design provides similar aesthetic value when compared to strict compliance with these standards.
  3. The Luna County Administrator may also allow for a deviation from these standards when it finds the applicant's proposed design provides equivalent or superior aesthetic value when compared to strict compliance with these standards.
  4. The small wireless facility design approved under this Section I must meet the conditions of 47 C.F.R. Sec. 1.6002(I).
  5. The Luna County Administrator (or designee) will review and may approve a request for deviation to the minimum extent required to address the applicant's needs or facilitate a superior design.
- I. An on-line application process enables applicants to submit up to twenty-five (25) small wireless facility locations, sites or nodes in one (1) application if qualifying criterion is followed during the application process. The qualifying requirements for multiple sites (up to 25) is for all the locations, sites or nodes must have a common design, rights-of-way Agreements, pole attachments Agreements, or other agreements that authorize the carrier to use (rent, lease or purchase) the rights to place their equipment/poles within/on specific lands or rights-of-way. The only variable allowed will be the specific locations for each of the sites or nodes. Each applicant is required at the outset to attest to the fact that the application will adhere to the specific requirements.



**DONE THIS 24<sup>TH</sup> DAY OF OCTOBER, 2022**

**BY THE BOARD OF COUNTY COMMISSIONERS OF  
LUNA COUNTY, STATE OF NEW MEXICO**

**ATTEST:**

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**Barbara L. Reedy,  
Commissioner, District 1**

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**Berenda McWright, County Clerk**

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**Linda M. Smrkovsky, Chairperson  
Commissioner, District 2**

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**John S. Sweetser,  
Commissioner, District 3**

## RESOLUTION 22-78

### STATE OF NEW MEXICO County of Luna



**Barbara L Reedy**  
Commissioner, District 1

**Linda M. Smrkovsky**  
Chair, District 2

**John S. Sweetser**  
Commissioner, District 3

**Chris A. Brice**  
County Manager

**Planning & Zoning**  
**700 S. Silver Ave.**  
PO DRAWER 551 DEMING NEW MEXICO 88031-0551  
(575) 543-6620 FAX (575) 544-3455

October 24<sup>th</sup>, 2022  
Les Gutierrez, Agent for Verizon/Sun State Towers  
3 Cibolita Peak  
Santa Fe, NM 87508

**RE: Recommendation for Conditional Use Permit, Sun State New Tower Build**  
**WTS Project: 11001**  
**Sun State Project: NM07-163 GUNSLINGER / NM5 PERRIN**  
**Project Address: 13000 SILVER CITY HWY. NW, DEMING, NM 88030**  
**(32.444314° N 107.924590° W)**

Mr. Gutierrez,

The Luna County Planning Department is pleased to issue a Conditional Use Permit and Authorization to start construction in accordance with the approved application and based on the following condition being met:

1. The applicant notifies Luna County or its agent within 10 business days when the construction is completed so that the final inspection and application process may be completed.
2. The applicant produces a valid contractor's license prior to construction commencing.

Sun State Towers/Verizon are authorized to obtain a building permit and start construction. The permit can be obtained from Construction Industries Division at 505 S. Main St., Suite 150 Las Cruces, NM 88004; telephone number 575-524-6320 Extension 101.

Should you have any questions, please contact Dean Williamson or myself. We appreciate your cooperation with the process.

Sincerely,

A handwritten signature in blue ink that reads "Lupita Hernandez".  
Lupita Hernandez  
Planning Department Supervisor



Wireless Tower Solutions

www.wirelesstowersolutions.com

September 29, 2022

Lupita Hernandez  
Luna County Director of Planning  
700 S Silver Ave  
Deming, NM 88030

**RE: Recommendation for Sun State New Tower Build**  
**WTS Project: 11001**  
**Sun State Project: NM07-163 GUNSLINGER / NM5 PERRIN**  
**Project Address: 13000 SILVER CITY HWY. NW, DEMING, NM 88030**  
**(32.444314° N 107.924590° W)**

Ms. Hernandez,

We have reviewed all of the materials submitted by the applicant for the above referenced application and find them to be complete and in compliance with the Luna County Ordinance #53 Revised (Luna County Wireless Telecommunications Ordinance), excepting the items noted below. They have requested to build a new 150' monopole tower on Silver City Highway.

This application must meet the Luna County Commission in accordance with the current Luna County Ordinance #53 Revised, and we recommend that this application be considered. That approval should include the following conditions:

1. The applicant notifies the County or its agent within 10 business days when the construction is complete so that the inspection and application process may be completed.
2. The applicant produce a valid contractor's license prior to construction commencing.

Please call or email me should you have any questions or concerns at (505) 738-1986 or dean.williamson@wtsgov.com.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dean Williamson", is written over a horizontal line.

Dean Williamson  
Wireless Tower Solutions

*Be it remembered that at a Regular meeting of the Luna County Board of County Commissioners in Deming New Mexico, on the 24th day of October 2022, the following proceedings were had and entered of record.*

**AMENDED RESOLUTION #22-03**

**NOTICE OF FEES**

**WHEREAS**, the Luna County Board of County Commissioners find it necessary to implement certain fees pertaining to copying, recording, business registrations, transactions within the Treasurer's Office, building permit fees, manufactured home/mobile home installation permit fees, and plan review fees, rural addressing service fees; and

**NOW THEREFORE, BE IT RESOLVED** that the Luna County Board of County Commissioners has determined that the above-mentioned fees be charged as followed:

**General Fees:**

- |    |   |         |
|----|---|---------|
| 1. | Copies of documents, single sided, black and white or electronic:                     |         |
|    | Letter size, (8 1/2" x 11"), legal size, (8" 1/2 x 14"), or tabloid size, (11" x 17") | \$0.50  |
|    | Color Copies  | \$1.00  |
| 2. | Above tabloid size (11" x 17") up to three (3') feet by four (4') feet                |         |
|    | Black and white paper map size:   | \$10.00 |
|    | Color Print:  | \$20.00 |
| 3. | Above three (3') feet by four (4') feet up to six (6') feet                           |         |
|    | Black and white paper map:  | \$25.00 |
|    | Color Print:  | \$35.00 |
| 4. | CD's:   | \$5.00  |
| 5. | USB Flash Drive   | \$25.00 |
|    | Each Additional Layer of GIS Data   | \$5.00  |

Requests for Specialty Maps, Data, or Data Sheets shall be detailed in writing to the Office of the County Planner for pricing, which will vary depending on complexity and density of layered information, data type, media type, and production time.

### **Recording Fees:**

DOCUMENTS RECORDED IN THE OFFICE OF THE COUNTY CLERK ARE PUBLIC RECORDS, SUBJECT TO INSPECTION AND DISCLOSURE.

Recording fees are established pursuant to Section 14-8-13 through 17, et seq., NMSA, 1978. Unless otherwise specified by law, the county clerk shall collect a recording fee of twenty-five dollars (\$25.00) for each document filed or recorded by the county clerk. If the document being filed or recorded contains more than ten entries to the county recording index, the county clerk shall collect an additional fee of twenty-five dollars (\$25.00) for each additional block of ten or fewer entries to the county recording index from the document. For each fee of twenty-five dollars (\$25.00) collected by the county clerk, eighteen dollars (\$18.00) shall be deposited in the county general fund and seven dollars (\$7.00) shall be deposited in the county clerk recording and filing fund.

Amounts collected from the equipment recording fee shall be deposited into a restricted account to be used as authorized by Section 14-8-12.2, NMSA, 1978.

### **Business Registration Fees:**

The annual business registration fee is \$25.00 pursuant to Ordinance No. 5 as Amended.

All licensed locations or premises in Luna County, outside the corporate limits of the City of Deming and the village limits of the Village of Columbus, beginning June 1 each year for the ensuing year, shall pay the following license tax:

(1)	Dispenser's License (Bar and Winery)	\$200.00
(2)	Retailer's License (Package Store)	\$100.00
(3)	Club License.....	\$ 50.00

This fee is due and payable to the County Clerk's Office at the time each business registration is issued on July 1.

### **Fees for Transactions within Treasurer's Department:**

#### **Return payment checks for correct amount** **\$5.00**

This fee will partially cover the cost of returning advalorem tax payment checks that are unsigned or are for an incorrect amount.

#### **Return item (NSF) charges** **\$30.00**

This fee will not be less than current bank charges. This charge will cover the processing cost of the return items.

### **Cost to Luna County-Personal Property (Mobile Home) Sale**

The administration and enforcement of delinquent personal property ad valorem taxes is authorized by Sections 7-38-51 through 56, NMSA 1978.

The delinquent personal property tax sale is authorized by Sections 7-38-57, 58, 59, NMSA 1867.

The County Treasurer is authorized to recover any cost incurred in preparing for the sale. To cover all additional costs of preparing for the personal property tax sale, the Luna County Treasurer hereby imposes the following fees:

- (1) **Delinquent personal property letter service fee** **\$10.00**  
This charge would be for all accounts that are delinquents more than 60 days.
- (2) **Demand Warrant Processing Fee** **\$25.00**  
This charge would be for all accounts that are delinquent over 180 days.
- (3) **Penalty and Interest**  
The P & I charge on accounts that are more than 180 days delinquent will be retained by Luna County to defray the cost of the personal property tax sales.

### **Building Permit Fees:**

Manufactured Home/Mobile Home Installation Permit (MHIP) fee: \$50.00

<u>Building Permit Value</u>	<u>Permit Fee</u>
\$2,000 and less	\$30.00
\$2,001.00 to \$3,000.00	\$30.00 + \$5.00 per \$500.00 increment in value over \$ 1,001.00
\$3,001.00 and over	\$40.00 + \$1.75 per \$1,000.00 increment in value
Missed Inspections	\$20/Per Scheduled
Appointment Unpermitted Construction	up to \$150.00
Unpermitted Mobile Home	up to \$100.00
Demolition Permit	up to \$100.00

Plan review fee is waived for standard residential construction projects. Complex residential and all Commercial construction project plan reviews will be +20% of permit fee.

Failure to obtain an approved building permit prior to beginning construction will result in the immediate discontinuance of further work on the project and shall be required to pay double the normal permit fee before a permit is issued.

**Rural Addressing Service Fee (new residents):**

Administrative processing	\$25.00
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**LCDC Department Fees:**

Bond Fee	\$10.00
Notary Fee	\$1.00

**DWI Program Fees:**

Screening Fee	Up to: \$100.00 one time fee
Treatment Fee	\$240.00
Compliance Fee	Up to: \$50.00/monthly

**Sheriff's Department Fees:**

Civil Process Fee/address/person	\$40.00
Report Fee	\$.50/page
VIN Inspection fee	\$35.00

**Domestic Violence Shelter Fees:**

--Batterer Intervention Program--

Assessment Fee	\$50.00
Program Fee	\$200.00
Workbook Replacement Fee	\$20.00

**Road Department Fees:**

Tire Disposal Fees	\$1.10/passenger \$5.00/truck \$10.00/tractor
Utility Easement Application Fee	\$200.00
Trenching	\$.10/ft(12x36) or \$.15/ ft (24x48)
Aerial	\$150 (<90') + \$1.50/ft thereafter
Service Hook up	\$50 w/no pavement cut \$100 w/ pavement cut
Meter Replacement	\$0
Maintenance	\$100(<250') then trenching app Permit fees above apply
Reinstatement Fees	\$200.00
Appeal Fees	\$50.00

**Planning Fees:**

Appeals to County Commission	\$50.00
Variance	\$100.00 per variance
Conditional/Special Use	Not Yet Determined
Mobile Home Moving Permit	No Charge
Mobile Home Installation Permit	\$50
Floodplain Review	\$15
Floodplain Permit	\$35
<i>(When required by the Floodplain Manager, the applicant must submit an elevation certificate by a registered land surveyor)</i>	

**Schedule of Administrative Fees  
for Administering the Luna County Subdivision Ordinance**

Summary Review Application	\$100.00 or \$10.00 per lot
Preliminary Plat Application	\$200.00 or \$15.00 per lot
RE-submittal of revised or Corrected plat application	\$100.00
Final Plat Application	\$100.00 or \$25.00 per lot
Replat	(Same as preliminary and final plat)
Vacation of Plat (Including partial vacation)	\$75.00
Vacation of Easement	\$50.00



**Claim of Exemption****\$25.00**

Where additional review by the County is required above and beyond normal review requirements due to complex, unforeseen, or unique circumstances relating to the proposed plan or plat, then the County may charge additional fees to defray the cost of such reviews.

**Wireless Telecommunication Facilities:**

Non-Refundable (payable at the outset of the application process to Luna County)

**TRADITIONAL TOWERS:**

Colocation, Modification or Eligible Facility:	\$ 9,000
New Tower:	\$ 17,500
Tower Registration Update:	\$ 1,500
Approved Application Update*:	\$ 1,500

**SMALL WIRELESS FACILITIES: (SWF) Per FC18-133, NM HB-38**

New SWF/ System (New or Replacement Poles)	1-25	\$750/each/site or node
SWF /DAS (New or Replacement Poles)	1-25	\$750/each/site or node
SWF; Colocation or Modification	1-5	\$100; 6-25 \$20/each/site or node
SWF; Approved Application Update*	1-5	\$100; 6-25 \$20/each/site or node

SWF Rights-of-Way Fees\*\* (Annual)                      \$250/site/node on an annual basis

\* Approved Application Updates – Are defined as those applications that have received final approval (permit issued), and the applicants decide it is necessary to modify the application before construction and final inspection. If construction or final inspection is completed or started, the applicant must submit a new application.

\*\*Rights-of-Way Fees apply to all sites located within Luna County's rights-of-way regardless of the owner of the structures used. The Wireless Facilities Permit shall include applicable Rights-of-way authorization/s. Annual payments will be due on the 1<sup>st</sup> of January each year, and permits are authorized as long as the applicant adheres to the defined ordinance requirements for all permitted facilities.

**NOW, THEREFORE BE IT RESOLVED THAT**, this resolution shall be reviewed periodically to determine if revisions are necessary.

**DONE THIS 24<sup>TH</sup> DAY OF OCTOBER, 2022**

**BY THE BOARD OF COUNTY COMMISSIONERS OF  
LUNA COUNTY, STATE OF NEW MEXICO**

**ATTEST:**

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**Barbara L. Reedy,  
Commissioner, District 1**

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**Berenda McWright, County Clerk**

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**Linda M. Smrkovsky, Chairperson  
Commissioner, District 2**

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**John S. Sweetser,  
Commissioner, District 3**

*Be it remembered that at a Special Meeting of the Board of County Commissioners of Luna County in Deming New Mexico, on the 24<sup>h</sup> day of October 2022, the following proceedings were had and entered of record.*

**RESOLUTION NO. 22-79**

**A RESOLUTION AUTHORIZING THE ASSIGNMENT OF OFFICIAL  
REPRESENTATIVES AND SIGNATORY AUTHORITIES**

**WHEREAS**, the Board of County Commissioners of Luna County of the State of New Mexico shall enter into a Loan Agreement with the State of New Mexico Environment Department, and

**Whereas** the Agreement is identified as CWSRF Project Number 122

**NOW THEREFORE, BE IT RESOLVED** by the named applicant that:

Name, Linda M. Smrkovsky, Chairperson, or her successor is authorized to sign the agreement for this project, and

Representative Name, Chris A. Brice, Count Manage, or his successor is the OFFICIAL BORROWER REPRESENTATIVE who is authorized to sign all other documents necessary to fulfill the Loan Agreement and the Promissory Note requirements (Project Description, Budget Form, Disbursement Requests) and to act as the project contact (may have more than one), and

Signatory Name, Joanne C. Hethcox, Budget and Finance Director, or her successor is the SIGNATORY AUTHORITY who is authorized to sign disbursement requests only for this project.

**DONE THIS 24TH DAY OF OCTOBER, 2022**

by the Board of County Commissioners of Luna County

**ATTEST:**

---

Linda M. Smrkovsky, Chairperson  
Commissioner, District 2

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Berenda McWright,  
County Clerk

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Barbara L. Reedy,  
Commissioner, District 1

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John S. Sweetser,  
Commissioner, District 3

FOR CONSIDERATION  
AT OCT 24, 2022  
MEETING

**LUNA COUNTY**  
**PERSONNEL ORDINANCE**  
**NUMBER 23**

**Adopted in 1994**  
**Amended in 1997**  
**Amended in 2000**  
**Amended in 2006**  
**Amended in 2014**  
**Amended in 2016**  
**Amended in 2017**  
***Amended in 2022***

**TABLE OF CONTENTS**

<b><u>Section</u></b>	<b><u>Title</u></b>	<b><u>Page</u></b>
Section 1	General Provisions	3
Section 2	Definitions	5
Section 3	Recruitment and Posting Procedure	9
Section 4	Employment Classification	12
Section 5	Conditions of Employment	15
Section 6	Changes in Employment Status	22
Section 7	Compensation and Benefits	26
Section 8	Employee Discipline	35
Section 9	Grievance Procedure	38
Section 10	Miscellaneous	40

## SECTION 1 - GENERAL PROVISIONS

### 1.1 SCOPE.

1.1.1 This ordinance serves as the personnel policy for Luna County and is a general basis and guide for the proper, efficient, and effective administration of personnel matters for the employees of Luna County. The personnel rules contained herein replace and supersede all previously issued personnel rules and regulations applicable to employees of Luna County.

1.1.2 This Ordinance applies to all employees of the County, including Elected Officials to the extent it does not contradict the duties of their office as stated in the Constitution of New Mexico or State statutes.

1.1.3 This Ordinance is subject to applicable Federal and State laws, rules and regulations. To the extent any provision in this Ordinance contradicts any Collective Bargaining Agreements ("CBA"), the CBA controls, all other provisions of this Ordinance not contradicting or addressed in any CBA are applicable to covered employees.

1.2 AMENDMENT OF POLICY. The Luna County Board of County Commissioners ("BOCC") reserve the right to amend this personnel ordinance at any time according to statutory procedures.

1.3 DISTRIBUTION POLICY. The Luna County Human Resources Department (HR Department) shall provide a copy of this ordinance to all employees. The copies will be made available electronically and a physical copy will be provided upon request. Employees shall acknowledge in writing at orientation and upon receipt of amended versions that they have read the policies contained herein or have had it read to them, understand the policies and that they will be responsible for following the policies.

1.4 EQUAL EMPLOYMENT OPPORTUNITY POLICY. Luna County strives to provide a work environment free from all forms of unlawful harassment and employment discrimination. All decisions regarding recruiting, hiring, promotion, assignment, training, termination, and other terms and conditions of employment will be made without unlawful discrimination on the basis of race, color, national origin, ancestry, sexual orientation, gender identity or expression, religion, age, pregnancy, disability, medical condition, work-related injury, covered veteran status, political ideology, genetic information, marital or familial status, or any other factor or characteristic that the law protects from employment discrimination. Individuals will be selected for promotion based on experience and demonstrated skill and abilities.

1.5 AMERICANS WITH DISABILITIES ACT POLICY. Luna County is committed to complying with the provisions of Title II of the Americans with Disabilities Act ("ADA"). The ADA is a federal law that prohibits discrimination against persons with disabilities. This law includes all services, programs and activities provided or made available by state and local governments. Luna County will ensure effective communication with individuals with disabilities and will, upon request, provide auxiliary communication aids and services to afford

those individuals equal opportunity for participation in Luna County sponsored meetings, events or activities. Luna County will, upon request, make reasonable accommodations to ensure equal opportunities in the application process, to enable qualified individuals with a disability to perform the essential functions of their job and to make in possible for an employee with a disability to enjoy equal benefits and privileges of employment.

**1.6 INFECTIOUS DISEASE POLICY**

**1.6.1** Luna County is committed to efforts to provide a safe environment for employees by reducing risk, to the extent practicable, during widespread outbreaks of infectious bacterial or viral diseases and ensuring the County's ability to maintain essential operations and provide necessary services to Luna County. The County will establishes separate policies and/or procedures for this purpose.

**1.6.2** No employee or applicant who is qualified and able to perform their job responsibilities without threatening the safety of themselves or others will be denied employment, deprived of employment benefits, denied promotions or discharged as a result of a diagnosis of an infectious disease. All decisions will be based on job related criteria and in accordance with applicable guidelines, such as those from the Center for Disease Control or the New Mexico Department of Health.

**1.7 ADMINISTRATION.** The County Manager, or in his absence a designee, shall be responsible for the administration and enforcement of this ordinance and any related amendments, resolutions, regulations, policies, procedures or directives adopted by the BOCC. The County Manager shall recommend to the BOCC new or revised employment relations rules and regulations as necessary. The County Manager is authorized to implement administrative instructions, procedures, policies and directives that are not directly contradictory to this Ordinance, as necessary, to effectively administer the employment relations system. The County Manager shall update and maintain the position classifications, benefits and comprehensive pay plan for Luna County employees as established by the BOCC.

**1.8 PRONOUNS.** All pronouns used in this personnel ordinance shall include the masculine, feminine and neutral gender, the singular and plural, and the context of this ordinance shall read accordingly.

**1.9 EMPLOYMENT AGREEMENTS.**

**1.9.1** All employment agreements, other than for the County Manager, are approved by the County Manager and may supersede any provision of this policy

**1.9.2** The employment agreement of the Luna County Manager is the exclusive domain of the BOCC and the terms and conditions therein are determined in the sole discretion of the BOCC.

**SECTION 2 - DEFINITIONS**

**2.1 ADMINISTRATIVE LEAVE WITH PAY or APPROVED LEAVE WITH PAY.**

Only the County Manager may authorize leave with pay for cause or in the best interests of the County, as determined in the sole discretion of the Luna County Manager.

**2.2 ADMINISTRATIVE REASSIGNMENT.** The temporary transfer or change of duties of an employee must be authorized by the County Manager and is generally reserved for situations where there is a pending investigation, disciplinary action or when it is in the best interest of the County, as determined by the County Manager.

**2.3 ANNIVERSARY DATE.** The date of hire of the County employee by Luna County.

**2.4 APPLICANT.** A person who has applied in writing for employment with Luna County on the form(s) prepared and available in the HR Department or online at [lunacountynm.us](http://lunacountynm.us).

**2.5 AT-WILL EMPLOYMENT STATUS.** Means an employee who serves at the pleasure of the hiring authority and may be terminated at any time with or without cause because they have no property interest in the continued position and may not utilize the formal grievance procedure set forth herein. Depending on the terms and conditions of employment, may be eligible for some, all or none of the employment benefits offered by the County.

**2.6 AUTHORIZED LEAVE.** Any absence, with or without pay, during scheduled work day that is approved by the appropriate Elected Official, Department Director or designee.

**2.7 CAUSE or JUST CAUSE.**

**2.7.1** Grounds or misconduct by an employee that warrants disciplinary action.

**2.7.2** Before a determination of Cause or Just Cause can be made, the following elements must exist:

**2.7.2.1** The employee in question must know or should have known the potential consequences of the conduct in question;

**2.7.2.2** The rule or standard violated must be reasonably related to the job duties and the safe and efficient performance thereof;

**2.7.2.3** There has been a fair and objective effort to gather all information regarding the conduct in question;

**2.7.2.4** There is sufficient evidence establishing the conduct in question;

**2.7.2.5** The rule or standard in question is being applied fairly and even handedly;

**2.7.2.6** The proposed response or action to the alleged conduct is reasonably related to the offense;

**2.7.2.7** The proposed response or action to the alleged conduct is being applied fairly, considering all the circumstances and the employee's history.

**2.8 CFR.** The regulations of the federal government known as the Code of Federal Regulations. Found at [ecfr.gov](http://ecfr.gov) or the County Attorney's office.

**2.9 COLLECTIVE BARGAINING AGREEMENT** The written legal contract between Luna County and the union or other labor organization recognized as the exclusive representative (American Federation of State, County and Municipal Employees) of a legally established bargaining units at LCSO and LCDC.



**2.10 COMPENSATORY TIME.**

**2.10.1** Paid leave hours granted to a non-exempt employee in lieu of overtime pay, which is generally paid at the rate of 1½ times the employee's regular rate of pay as defined by the Fair Labor Standards Act ("FLSA").

**2.10.2** Luna County does not award Compensatory Time, but instead pays the appropriate overtime rate of pay, unless expressly approved by the County Manager in advance with the employee in question also being notified in advance.

**2.11 COUNTY BUSINESS.** The authorized performance of duties by an employee on behalf of Luna County and for which the employee is compensated by the County, regardless of the time or place of performance.

**2.12 COUNTY MANAGER.** The appointee of the Board of County Commissioners of Luna County ("BOCC") serving as the chief executive officer of Luna County who serves as or is responsible for personnel management, budget management, fiscal decisions, property custodian and as the administrative assistant to the BOCC in the aiding and exercising of its duties and responsibilities.

**2.13 DEMOTION.** The voluntary or involuntary change in an employee's duties or job description with a pay reduction.

**2.14 DEPARTMENT DIRECTOR.** An employee who has responsibility for supervising or administering a department or division of Luna County government. An Elected Official is also classified as a Department Director for the purposes of this ordinance.

**2.15 DISCRIMINATION.** Any act, failure to act or decision that has an adverse effect on an employee and is based on a legally prohibited basis, including race, color, national origin, ancestry, sexual orientation, gender identity or expression, religion, age, pregnancy, disability, medical condition, work-related injury, covered veteran status, political ideology, genetic information, marital or familial status, or any other factor or characteristic that the law protects.

**2.16 DUE PROCESS.** The rights afforded to employees with established and recognized property interests in continued employment with Luna County. These rights apply to process for grieving unfair or improper employment practices and disciplinary actions.

**2.17 ELECTED OFFICIAL.** An individual elected by popular vote or appointed to fill vacancies in an elected office in Luna County (i.e., County Commissioners, County Clerk, County Treasurer, County Sheriff, County Assessor, and County Probate Judge).

**2.18 ENTRY LEVEL EMPLOYEE RATE OF PAY.** The bottom rate of pay for the designated pay range for each position in the Luna County organizational chart, applied to new hires and newly promoted employees.

**2.19 EXEMPT EMPLOYEES.**

**2.19.1** Employees meeting applicable requirements in the FLSA who may be compensated on a fixed salary.

**2.19.2** Exempt Employees are not eligible for overtime pay or compensatory time.

**2.19.3** Exempt Employees cannot have PTO taken for time away from work that amounts to less than one full day of work, but may still be subject to discipline.

**2.20 FLSA.** The Federal Fair Labor Standards Act.

**2.21 FMLA.** The Federal Family and Medical Leave Act

**2.22 GRIEVANCE.** The Due Process afforded certain employees to address specified employment practices and disciplinary actions.

**2.22.1** INFORMAL GRIEVANCE The procedure to address written complaints regarding unfair or improper employment practices or disciplinary actions that do not result in loss of pay, suspension, demotion or termination to the employee.

**2.22.2** FORMAL GRIEVANCE The procedure to address written complaints concerning actions taken by management which resulted in loss of pay, suspension, demotion or termination to the employee.

**2.23 LAYOFFS (Reduction in Force).** The involuntary separation of an employee from County service without cause on the part of the employee, due to reorganization, lack of work, lack of funds, or lack of appropriation of funds.

**2.24 NMSA.** The laws of the State of New Mexico known as the New Mexico Statutes Annotated. Found at [NMSA.com](http://NMSA.com) or the County Attorney's Office.

**2.25 NON-EXEMPT EMPLOYEES.**

**2.25.1** Employees who DO NOT meet applicable requirements in the FLSA who may be compensated on a fixed salary.

**2.25.2** Non-Exempt Employees are legally entitled to overtime pay or compensatory time for hours worked in excess of the legal limits.

**2.25.3** Only Non-Exempt Employees are subject to involuntary reductions in PTO for all time away from work during scheduled work hours.

**2.26 PAY OR WAGE INCREASE.** Increases to the pay, wage or salary of individual employees and are awarded by the County Manager pursuant to applicable County policies, such as evaluations.

**2.27 PAYROLL INCREASES.**

**2.27.1** Payroll increases are determined by the BOCC and may or may not be annual and may be a percentage or specified amount and shall be determined by the BOCC contingent upon available budget.

**2.27.2** The BOCC may, in exceptional circumstances, limit payroll increases to specific classes of employees or departments, such as regular employees, part-time employees,

grant employees, contract employees, temporary employees, appointed employees, or elected officials but pay or wage increases for individual employees shall be determined by applicable County policies and are awarded in the discretion of the County Manager.

**2.28 PERSONAL TIME OFF (PTO).** Is compensated time away from work provided as a discretionary benefit by the County to employees and specified accrual rates.

**2.29 PROMOTION.** The voluntary, permanent transfer or change of duties of an employee based on a merit as determined by a process resulting in elevated classification, rank, responsibility and pay range or compensation.

**2.30 RETALIATION.** Adverse action taken by or on behalf of Luna County by an employee against another employee because that employee engaged in a protected activity, such as reporting sexual harassment or other inappropriate conduct.

**2.31 SEXUAL HARASSMENT.** Conduct that is unwelcome sexually oriented behavior, demands, comments or physical contact in the workplace when:

**2.31.1** Submission to such conduct is made either explicitly or implicitly a term or condition of employment;

**2.31.2** Submission to, or rejection of, such conduct is used as a basis for employment decisions or opportunities; or

**2.31.3** Such conduct has the purpose or effect of substantially interfering with an individual's work performance, or creating an intimidating, hostile or offensive working environment.

**2.32 TERMINATION.** The involuntary end to an individual's employment with Luna County.

**2.33 UNAUTHORIZED LEAVE.** Any absence, without pay, from a scheduled work day without reasonable grounds or approval of the appropriate Elected Official, Department Director or designee and may result in Administrative Leave without Pay and/or disciplinary action.

**2.34 USC.** The laws of the federal government known as the United States Code. Found at govinfo.gov or the County Attorney's office.

**2.35 USERRA.** The federal Uniformed Services Employment and Reemployment Rights Act.

**2.36 WORKPLACE HARASSMENT.** Conduct that is unwelcome and is based on a legally prohibited basis, including race, color, national origin, ancestry, sexual orientation, gender identity or expression, religion, age, pregnancy, disability, medical condition, work-related injury, covered veteran status, political ideology, genetic information, marital or familial status, or any other factor or characteristic that the law protects. Workplace harassment encompasses discriminatory conduct, sexually inappropriate or harassing conduct, violent or physically intimidating behavior.

## SECTION 3 - RECRUITMENT AND SELECTION

Commented [L4]: Reordered, formally Section 4

**3.1 RECRUITMENT AND POSTING PROCEDURE.** Recruitment for job vacancies may be internal only, meaning only current Luna County employees are eligible to apply or external, which means that anyone is eligible to apply. The decision whether a position is internal or external belongs to the Department Head or Elected Official with the approval of the HR Department.

**3.1.1 Internal Positions.** Vacancies to be filled from a pool of only current Luna County employees from any Department by posting of a job notice on the Luna County website and outside the HR Office and identified as "INTERNAL ONLY". The posting shall be for at least five (5) working days.

**3.1.2 External Positions.** Vacancies to be filled from a pool of interested applicants, including but not limited to current Luna County employees. External Positions shall be posted on the Luna County website and outside the HR Office and advertised for at least five (5) working days.

**3.1.3** "Advertising" for purposes of this Section means placing the job description or a summary thereof at one or more of the following locations:

**3.1.3.1** NM Dept. of Work Force Solutions;

**3.1.3.2** Luna County website and/or Facebook page;

**3.1.3.3** A newspaper of general circulation or its website;

**3.1.3.4** New Mexico Counties;

**3.1.3.5** Recruiting services or websites; and

**3.1.3.6** Other appropriate venues, such as universities and professional societies.

**3.1.4** Neither posting nor advertising is required for recruiting candidates for Discretionary Employees.

**3.1.5** The County Manager may exempt any vacancy from posting and/or advertising by written directive to the HR Director and made part of the hiring file for that position.

## **3.2 SUBMISSION OF APPLICATIONS.**

**3.2.1** Applications for employment shall be accepted in the HR Department office during normal business hours or through the Luna County website anytime and must be submitted on the form provided by Luna County within the stated time period.

**3.2.2** When specialized qualification is necessary, such as a certificate, license or degree, proof of the qualification must be attached to the Application unless granted a waiver.

**3.2.3** Waivers of any qualification, or acceptance of an equivalency, may be requested in writing by the Applicant and attached to the Job Description. Such waivers or acceptances are granted in the sole discretion of the County Manager.

**3.2.4** Applications must be accompanied by properly executed Job Descriptions and all other items required in the posting or advertisement, such as letters of interest, resumes, letters of recommendations, licenses or certifications.

**3.2.5** Late, incomplete or unsigned applications will be rejected and the Applicant will be removed from consideration for the position with written notice sent to the Applicant.

3.2.6 Applicants who do not meet the Minimum Qualification Standards contained in the Job Description will be removed from consideration for the position with written notice sent to the Applicant.

3.2.7 **Immigration Laws Compliance.** Applicants are responsible for furnishing proof of identification and employment authorization in accordance with the Immigration Reform and Control Act of 1986, 8 U.S.C. Part 245a, and any amendments thereto.

3.2.8 Applicants meeting the requirements in this section shall be considered for positions for which they have applied and may also be considered for other vacancies. Consideration for any position does not imply or guarantee an interview, test or further participation in the hiring process.

### 3.3 **SELECTION.**

3.3.1 The HR Department will screen all applications for compliance with the requirements and remove from consideration all incomplete, nonconformed, unsigned and unqualified applications.

3.3.2 Applicants designated as Ineligible for Hire or Rehire will be removed from consideration.

3.3.3 Upon completion of the initial screening the HR Department will prepare a list of candidates eligible to continue with a copy of their application. The list will be sent to the Department Head or Elected Official.

3.3.4 Based on the applications, the Department Head and Elected Official will indicate which applicants should proceed to the next steps. The next step depends on the vacancy being filled and may include a physical exam, background check, test or other evaluation, or an interview.

3.3.5 Upon receipt of the list, the HR Department will add any current Luna County employee, veteran and highly qualified candidates not already on the list.

3.3.6 The HR Department will then contact the selected applicants and schedule the next step or steps in the hiring process.

3.3.7 A minimum of three (3) eligible applicants, or all eligible applicants if there is less than three (3) eligible applicants, shall be interviewed. All Luna County employees and veterans qualifying for the position shall be interviewed.

3.3.8 Upon completion of the hiring process, the HR Department will tabulate the results and present an anonymous ranking to the Department Head or Elected Official.

3.3.9 The highest scoring candidate will be offered the position, EXCEPT:

3.3.9.1 when one or more candidates are within five percentage (5%) points; or

3.3.9.2 when the Department Head and Elected Official can articulate legal, non-discriminatory grounds for selecting another candidate AND the HR Department concurs in the selection.

3.3.10 At any point in the hiring process, the County Manager may intervene and, by written directive, add or remove candidates from the process.

3.3.11 The selection process, and all elements thereof, shall be administered only by the HR Department under the supervision of the County Manager.

### 3.4 **HIRING**

3.4.1 Once the successful candidate has been determined, the HR Department shall prepare a Conditional Offer Letter.

3.4.2 As a condition of employment all successful candidates must submit to the appropriate alcohol or drug screen, as determined by the applicable alcohol and drug policy.

3.4.3 Other terms of conditional employment offers, when applicable, are:

3.4.3.1 Background check;

3.4.3.2 Physical examination;

3.4.3.3 Physical fitness test;

3.4.3.4 Psychological evaluation;

3.4.3.5 Verification of certifications, licenses, degrees, other specialized qualifications; or references.

3.4.4 Verifications necessary for employment shall only be conducted by the HR Department.

3.4.5 The hiring process, and all elements thereof, shall be administered only by the HR Department under the supervision of the County Manager.

3.5 **INELIGIBILITY FOR HIRE.** An Applicant will be considered ineligible for hire by Luna County if the applicant has:

3.5.1 Made any false statement or deliberate omission on the employment application;

3.5.2 Not met the requirements or qualifications of the position;

3.5.3 Not met the criteria for insurance or bonding as required by Luna County or State of New Mexico;

3.5.4 Not completed or failed a drug screen;

3.5.5 Received an unsatisfactory background check;

3.5.6 Not been certified by a physician that the applicant can perform the essential duties of the position;

3.5.7 Failed to complete the medical examination, psychological examination, or other requirements; or

3.5.8 Failed to fulfill the statutory requirements of Section 4-41-8, NMSA 1978, if applying for position of Deputy Sheriff.

Commented [L5]: Divided Section between hire and re-hire

3.6 **INELIGIBILITY FOR RE-HIRE.** An Applicant who was previously employed by Luna County in any capacity will be considered ineligible for re-hire by Luna County if the Applicant has:

3.6.1 Made any false statement or deliberate omission on the employment application;

3.6.2 Not met requirements and qualifications of the position;

3.6.3 Not met the criteria for insurance or bonding as required by Luna County or State of New Mexico;

3.6.4 Not completed or failed a drug screen;

3.6.5 Received an unsatisfactory background check;

3.6.6 Not been certified by a physician that the applicant can perform the essential duties of the position;

3.6.7 Failed to complete the medical examination, psychological examination, or other requirements; or

Commented [L6]: Divided Section between hire and re-hire

- 3.6.8 Failed to fulfill the statutory requirements of Section 4-41-8, NMSA 1978, if applying for position of Deputy Sheriff;
- 3.6.9 Provided inadequate resignation notice as defined in this policy;
- 3.6.10 Previously resigned a position with Luna County to avoid a pending disciplinary action unless the County Manager determines that the applicant has been sufficiently rehabilitated to warrant the public trust;
- 3.6.11 Has been previously dismissed for cause from employment with Luna County unless the County Manager determines that the applicant has been sufficiently rehabilitated to warrant the public trust; or
- 3.6.12 Any other valid and/or substantive reason deemed in the best interest of Luna County, as determined in the sole discretion of the County Manager. The County Manager retains authority over all discretionary decisions pursuant to this section.

### 3.7 **DURATION OF INELIGIBILITY.**

- 3.7.1 Applicants determined to be ineligible under this section shall be ineligible for a minimum period of one year and shall remain ineligible until eligibility is returned by the County Manager.
- 3.7.2 The process for requesting reinstatement of eligibility is governed by the County Manager's Directive, as it may be amended from time to time.
- 3.7.3 This Section is subject to the provisions of the Criminal Offender Employment Section 28-2-1, NMSA 1978 and Section 10-1-3, NMSA 1978.

**Commented [L8]:** New Section based on CM Directive 2022-001

## **SECTION 4 - EMPLOYMENT CLASSIFICATIONS**

### 4.1 **REGULAR EMPLOYEE.**

**4.1.1 Full-Time.** An employee who has completed the probationary period and is normally scheduled to work a minimum of forty (40) hours per week indefinitely and is not subject to an employment contract or term conditions. A Full-Time Regular Employee is eligible for all employment rights and benefits provided by Luna County.

#### **4.1.1.1 FLSA Non-exempt Employee**

A Full-Time Regular Employee who is paid on an hourly basis for hours worked and is covered by the FLSA Overtime Rules and is required to use PTO or take leave without pay for hours absent during scheduled work hours.

#### **4.1.1.2 Full-Time FLSA Exempt Employee**

A Full-Time Regular Employee who is paid on a salary basis in an amount meeting the FLSA Salary Level Test and performs FLSA exempt job duties. Such employees are not covered by the FLSA Overtime Rules and cannot be required to use PTO or take leave without pay for hours absent during scheduled work hours unless the hours absent amount to one full workday.

**4.1.2 Part-Time.** An employee who has completed the probationary period and is limited to working a maximum of thirty (30) hours per week indefinitely and is not subject to an employment contract or term conditions.

**4.1.2.1** Employees working a maximum of nineteen (19) hours per week are not eligible for any employment benefits provided by Luna County.

**Commented [L9]:** Reordered, formerly section 3 and titled Employment Status

4.1.2.2 Employees working more than nineteen (19) hours per week but no more than thirty (30) are eligible for health insurance and retirement benefits.

4.1.2.3 Employees are covered by the disciplinary and grievance provisions herein.

4.1.2.4 Are not eligible to accrue PTO or receive Holiday Pay.

4.1.2.5 Part-time positions may or may not be indefinite but are not temporary or seasonal.

**4.2 TEMPORARY OR SEASONAL EMPLOYEE.** An employee who is scheduled to work up to forty (40) hours per week for a period not to exceed nine (9) months; is not entitled to any of the employment rights and benefits provided by Luna County; maybe be terminated at any time for any legal reason or no reason at all; and is not eligible for the formal grievance process.

**4.3 TERM EMPLOYEE.** An employee who has completed the probationary period, whose salary and/or benefits are funded and determined by a grant or other outside source and whose employment is for a specified period of time or term.

4.3.1 **Full-Time.** An employee who is scheduled to work forty (40) hours per week for a specified period the term of employment.

4.3.2 **Part-Time.** An employee who is limited to working a maximum of thirty (30) hours per week for a specified period or term of employment.

4.3.3 Term Employees can be terminated for any legal reason or no reason at all, without regard to job performance and will be terminated in the event funding is not continued.

4.3.4 Part-Time Term Employees working a maximum of nineteen (19) hours per week are not eligible for any employment benefits provided by Luna County.

4.3.5 Any Term Employee working more than nineteen (19) hours per week up to forty (40) hours per week may be eligible for health insurance and retirement benefits, depending on the terms and conditions of the funding for the position.

4.3.6 Term Employees are covered by the disciplinary and grievance provisions herein, excluding provisions related to termination.

4.3.7 Only Full-Time Term Employees are eligible to accrue PTO and receive Holiday Pay, depending on the terms and conditions of the funding for the position.

**4.4 DISCRETIONARY EMPLOYEE.** An employee who is the appointee of Elected Officials and are considered Full-Time FLSA Exempt employees with their respective salaries set by BOCC resolution.

4.4.1 The Discretionary Employees of Luna County are:

4.4.1.1 County Manager, hired by the BOCC;

4.4.1.2 Executive Secretary to the Sheriff, appointed by the Sheriff, subject to confirmation by the BOCC; and

4.4.1.3 Any other positions authorized by a majority vote of the BOCC.

4.4.2 The Chief Deputy in the offices of the Assessor, Clerk and Treasurer is no longer an At-Will or Discretionary position but will be a Regular Employee, FLSA Exempt, designated by the Elected Official to perform the duties of the Elected Official in a leave

**Commented [L11]:** Converted Chief Deputies to merit employees



of absence or inability to serve. Chief Deputies will receive ninety-percent (90%) of the elected officials' salary.

**4.4.3** Employees serving as Chief Deputies as of July 1, 2022, or as soon thereafter as this amended Personnel Ordinance is enacted, will be re-classified as non-probationary Regular Full-time Employees of Luna County.

**4.4.4** Discretionary Employees are considered "at-will" and can be terminated at any time for any legal reason or no reason at all.

**4.4.5** Discretionary Employees do not accrue PTO or receive Holiday Pay.

**4.4.6** Discretionary Employees are entitled to avail themselves of the Grievance Procedures, except for termination.

**4.5** **PROBATIONARY EMPLOYEE.** A Regular or Term Employee who, for the specified period of time, is considered an At-Will Employee.

**4.5.1** The specified probationary period for employees in the Luna County Sheriff's Office, Luna County Detention Center and Dispatch is twelve (12) months from their date of hire.

**4.5.2** The specified probationary period for employees in all other Luna County Departments is six (6) months from their date of hire.

**4.5.3** The purpose of the probationary period is to evaluate the employee's performance, fitness for and behavior in the job and extended absences, paid or unpaid, do not count toward the probationary period.

**4.5.4** Performance evaluations shall be conducted at:

**4.5.4.1** One, Three, Six and Eleven months for employees of LCDC, LCSO and Dispatch; and

**4.5.4.2** One, Three and Five months for all other County employees.

**4.5.5** Evaluations are intended to determine the employee's fitness for the position and ability to work with the public, peers, supervisors and management.

**4.5.6** During the probationary period, an employee hired to fill a position requiring certification shall obtain the certificate required for the position. Failure to obtain the certification within the probationary period may result in the employee's termination.

**4.5.7** Absent express authorization from the HR Department and approval of the County Manager, the compensation for newly hired employees shall be the minimum wage for the position, as determined by the salary/wage plan in effect at the time of hiring. Compensation levels for employees are evaluated based on Performance Evaluations and only then may be adjusted, as deemed appropriate by the County Manager, based on the request of the Elected Office or Department Head and a recommendation from the HR Department, except for those positions governed by a Collective Bargaining Agreement.

**4.5.8 Employment Probation.** The probationary period for persons newly employed or re-employed by the County and are employed on At-Will Employment Status.

**4.5.8.1** The Employment Probation period may not be terminated early.

**4.5.8.2** Employment Probation may be extended for up to 6 months based on unsatisfactory evaluations, at the request of the Elected Official or Department Director. The HR Department shall make a recommendation on each request with

the County Manager or designee having the sole authority to grant, modify or reject the request.

**4.5.8.3** Employees who do not successfully complete Employment Probation are subject to termination.

**4.5.8.4** Any person rehired or reemployed by the County after the end of prior county employment shall be required to serve a new Employment Probation period.

**4.5.9 Positional Probation.** The probationary period for current Luna County employees receiving promotions and who retain protected employment status can only be terminated from County employment for cause.

**4.5.9.1** The Positional Probation period may be terminated anytime after completion of one-half of the probationary period by the County Manager at the request of the Department Head or Elected Official and with a recommendation from the HR Department.

**4.5.9.2** Positional Probation may be extended for up to 3 months based on unsatisfactory performance. The Department Head or Elected Official may request an extension and the HR Department shall make a recommendation on each request with the County Manager or designee having the sole authority to grant, modify or reject the request.

**4.5.9.3** An employee who is temporarily assigned to a vacant position and is subsequently hired to fill that position shall serve the required probationary period on Positional Probation.

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## **SECTION 5 – CONDITIONS OF EMPLOYMENT**

Commented [L13]: Reordered, formerly Section 6

### **5.1 PROBATIONARY/PROMOTION EVALUATIONS.**

**5.1.1** New hires and newly promoted employees will be evaluated in writing on forms provided by the HR Department.

**5.1.1.1** New employees at LCSO, LCDC and Dispatch are on Employment Probation status for twelve (12) months and will be evaluated after 30 days, 90 days, 180 days and 330 days.

**5.1.1.2** New employees in other departments and all newly promoted or transferred employees are on Positional Probation for six (6) months and will be evaluated after 30, 90 and 150 days.

**5.1.2** Probationary and Promotion Evaluations are intended to establish the standards of performance expected from each employee and an assessment of that performance. The supervisor shall meet with the employee in person and shall review the Job Description and make any adjustments necessary to reflect the actual tasks being performed. Unless otherwise decided by the County Manager, the supervisor will then evaluate the employee on the following:

**5.1.2.1** Quality of work;

**5.1.2.2** Work habits;

**5.1.2.3** Job-specific standards;

**5.1.2.4** Performance expectations;

**5.1.2.5** Progress in meeting expectations;

Commented [L15]: New Section

- 5.1.2.6 Overall productivity;
  - 5.1.2.7 Attendance;
  - 5.1.2.8 Workplace behavior and relationships;
  - 5.1.2.9 Employee comments or requests; and
  - 5.1.2.10 Supervisor comments and requests.
- 5.1.3 Initial or 30-Day Evaluation – The primary focus of this initial evaluation is to determine whether the employee has the necessary skills, equipment and materials to perform their job.
- 5.1.4 Intermediate or 90 and 180-Day Evaluations – The intermediate evaluations are intended to assess the employee's capabilities and ultimate ability to perform the job for which they were hired and to identify strengths and weaknesses.
- 5.1.5 Final or 150 and 330-Day Evaluations – The final evaluations are intended to determine the employee's fitness for their job and whether to continue their employment. Based on the evaluation, the supervisor shall recommend one of the following:
- 5.1.5.1 Unsatisfactory completion of probation. For newly hired employees this would be a recommendation for termination of employment of a newly hired employee and must be based on poor performance or inability to satisfactorily perform the job, supported by each of the prior evaluations. For newly transferred or promoted employees, this would be a recommendation to return the employee to their prior position and salary;
  - 5.1.5.2 Extending the probationary period for up to six (6) additional months to improve one or more aspects of job performance;
  - 5.1.5.3 Early termination of Positional Probation, supported by each of the prior evaluations;
  - 5.1.5.4 Satisfactory completion of Employment or Positional Probation and change to regular employee status. The supervisor should also include a recommendation regarding the placement between the minimum and midpoint within the applicable salary range and verification of the budget to support the recommendation.

## 5.2 **PERFORMANCE APPRAISALS**

5.2.1 Two written evaluations will be conducted for all employees, except Probationary Employees and Temporary or Seasonal Employees. Annual Performance Appraisals will be conducted during the first pay period that starts in November and Mid-Year Reviews will be conducted during the first pay period that starts in May.

5.2.2 Annual Performance Appraisals are intended to promote communication between supervisors and employees in establishing performance standards and expectations and assessing how well the employee is meeting those standards and expectations. The supervisor shall meet with the employee in person and shall review the Job Description and prior evaluations and reviews. Unless otherwise determined by the County Manager, the supervisor will evaluate the employee on the following:

- 5.2.2.1 Adaptability;
- 5.2.2.2 Attendance and Punctuality;
- 5.2.2.3 Communication Skills;
- 5.2.2.4 Dependability;

Commented [L16]: New Section

- 5.2.2.5 Initiative;
- 5.2.2.6 Job Knowledge;
- 5.2.2.7 Organizational Support;
- 5.2.2.8 Planning and Organization;
- 5.2.2.9 Productivity; and
- 5.2.2.10 Quality of work.

5.2.3 The Supervisor shall conduct the Annual Performance Appraisal and complete the appraisal form provided by the HR Department. At the conclusion of the Annual Performance Appraisal meeting, the employee shall be provided a copy and will have two (2) days to review and comment on the appraisal before signing it.

5.2.4 All completed Annual Performance Appraisals must be submitted to the HR Department before the commencement of the Thanksgiving Holidays.

5.2.5 Prior to December 31 of each year the County Manager will convene the Appraisal Review Committee consisting of the HR Director, Budget and Procurement Director and County Attorney and anyone else the County Manager designates to formulate a recommendation regarding merit pay increases, if any are warranted, for Regular Employees, Term Employees, Discretionary Employees and Probationary Employees who are not members of a recognized collective bargaining unit of Luna County.

5.2.6 An Unsatisfactory Annual Performance Appraisal may result in implementation of a Performance Improvement Plan, Last Chance Agreement or disciplinary action up to and including termination, subject to the provisions of this personnel policy. If termination is recommended due to an unsatisfactory evaluation, the employee may use the formal grievance process as outlined herein.

### 5.3 **MID-YEAR REVIEW.**

5.3.1 Mid-Year Reviews are intended to provide the employee with feedback and status on their performance, areas of excellence and areas in need of improvement and to allow the employee to request assistance or additional resources in meeting their performance standards and expectations. It is also an opportunity for supervisors to measure morale and to check on the overall well-being of their employees. Supervisors should also take this opportunity to listen to any suggestions, complaints and concerns from their employees.

5.3.2 The supervisor shall conduct the Mid-Year Review in person and complete the review form provided by the Human Resources Department. At the conclusion of the review, the employee shall be provided a copy and will have two (2) days to review and comment on the review before signing it.

5.3.3 All completed Mid-Year Review forms must be submitted to the HR Department before the Memorial Day Holiday.

Commented [L18]: New Section

### 5.4 **PROHIBITED POLITICAL ACTIVITIES.**

All employees are prohibited from the following:

5.4.1 Using Luna County equipment, materials, authority or employment influence for the purpose of interfering with or affecting the result of an election or a nomination for office or for any other political purpose.

Commented [L19]: Unchanged

**5.4.2** Directly or indirectly using a position of employment to coerce, attempting to coerce, command or advise a State or County officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, union, agency or person for a political purpose.

**5.4.3** Threatening to deny promotions to any employee who does not vote for certain candidates; requiring employees to contribute part of their pay to political funds; coercing subordinate employees to buy tickets to political fund-raising events and similar events; advising employees to take part in political activity and matters of a similar nature.

**5.4.4** No Luna County employee may engage in political activity prohibited by the Hatch Act, 5 U.S.C. Chapter 15. The County Manager shall notify the appropriate agency with regard to any matters pertaining to the Hatch Act.

**5.4.5** Any person elected to a Luna County Office (Commissioner, Clerk, Treasurer, Assessor, Sheriff, Probate Court Judge) shall not be employed by Luna County in any other capacity after taking office. This excludes independent contractors and vendors of Luna County.

## **5.5 CONFLICTS.**

**5.5.1 Conflict Ban.** Conflicts of interest are prohibited in accordance with the Governmental Conduct Act, 10-16-1 et seq. NMSA 1978 and the Luna County Code of Conduct, subject to the exceptions and exemptions therein. Specifically, Elected Officials and employees:

**5.5.1.1** May not take any act the primary purpose of which is to enhance their financial interest or that of their immediate family (spouse, parents, children or siblings by blood or marriage);

**5.5.1.2** Are disqualified from taking any act or participating in any activity directly affecting their or their family's financial interests; and

**5.5.1.3** May not acquire a financial interest which may be directly affected or influenced by their employment or position with Luna County.

**5.5.2 Termination of Outside Employment.** Pursuant to Section 10-16-4.2, NMSA 1978, Elected Officials and employees must disclose all outside employment to the HR Department. A determination may be made by the County Manager that the supplementary outside employment violates this policy and may require termination of the outside employment.

## **5.6 ETHICAL CONDUCT.** In accordance with the Governmental Conduct Act, 10-16-1, et seq., NMSA 1978, and the Luna County Code of Conduct, Elected Officials and employees:

**5.6.1** Shall treat their position or employment as a public trust and shall use their powers and authority only to advance the public interest and not to obtain personal benefits or pursue interests;

**5.6.2** Shall conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintaining integrity and discharging ethically the high responsibilities of public service;

**5.6.3** Shall fully disclose real and potential conflicts of interest and shall take all reasonable efforts to avoid undue influence and abuse of office;

**5.6.4** Shall not receive or request any money, thing of value or promise thereof that is

**Commented [L20]:** Updated to reflect language of 10-16-4

**Commented [L21]:** Updated to reflect provisions of 10-16-3, 10-16-6, 10-16-13

conditioned upon or given in exchange for promised performance of an official act;

5.6.5 Shall not use or disclose confidential information acquired by virtue of their position or employment for their or another's personal gain; or

5.6.6 Shall not submit a bid or proposal for any project or contract in which they participated in the preparations of specifications, qualifications or evaluation criteria.

## 5.7 **DISCRIMINATION AND WORKPLACE HARASSMENT.**

Commented [L22]: Updated to recent legal standards.

5.7.1 Luna County strives to create and maintain a work environment in which people are treated with dignity, decency and respect. The environment of the County should be characterized by mutual trust and the absence of intimidation, oppression and exploitation. Luna County will not tolerate unlawful discrimination or harassment of any kind. Through enforcement of this policy and by education of employees, Luna County will seek to prevent, correct and discipline behavior that violates this policy.

5.7.2 Elected Officials and employees, regardless of their positions, are covered by and are expected to comply with this policy and to take appropriate measures to ensure that prohibited conduct does not occur. Appropriate disciplinary action will be taken against any employee who violates this policy. Based on the seriousness of the offense, disciplinary action may include verbal or written reprimand, suspension, or termination of employment.

5.7.3 Managers and supervisors who knowingly allow or tolerate discrimination, harassment or retaliation, including the failure to immediately report such misconduct to the HR Department, are in violation of this policy and subject to discipline.

### 5.7.4 **Discrimination**

5.7.4.1 It is a violation of Luna County's policy to discriminate in the provision of employment opportunities, benefits or privileges; to create discriminatory work conditions; or to use discriminatory evaluative standards in employment if the basis of that discriminatory treatment is, in whole or in part, the person's race, color, national origin, age, religion, disability status, sex, sexual orientation, gender identity or expression, genetic information or marital status.

5.7.4.2 Discrimination of this kind may also be strictly prohibited by a variety of federal, state and local laws, including Title VII of the Civil Rights Act of 1964, the Age Discrimination Act of 1967 and the Americans with Disabilities Act of 1990. This policy is intended to comply with the prohibitions stated in these anti-discrimination laws.

5.7.4.3 Discrimination in violation of this policy will be subject to disciplinary measures up to and including termination.

### 5.7.5 **Harassment**

Luna County prohibits harassment of any kind and will take appropriate and immediate action in response to complaints or knowledge of violations of this policy. For purposes of this policy, harassment is any verbal or physical conduct designed to threaten, intimidate or coerce an employee, co-worker, or any person working for or on behalf of Luna County.

### 5.7.6 **Sexual harassment**

Luna County prohibits sexual harassment of any kind and is defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a



sexual nature when submission to or rejection of such conduct is used as the basis for employment decisions or such conduct has the purpose or effect of creating an intimidating, hostile or offensive working environment.

#### **5.7.7 Consensual Romantic Relationships**

Luna County strongly discourages romantic or sexual relationships between a manager or other supervisory employee and employees who report directly or indirectly to that person.

**5.7.7.1** If there is such a relationship, the parties need to be aware that one or both may be moved to a different department or other actions may be taken.

**5.7.7.2** Elected Officials or employees in a consensual relationship that is romantic or sexual in nature with another employee who reports directly or indirectly to that employee, or if one of the parties is in a supervisory capacity in the same department in which the other party works, the parties must disclose the relationship to HR Department. The disclosure must be on the form provided by the HR Department and will be included in the appropriate personnel files.

**5.7.7.3** Disclosure of consensual romantic or sexual relationships is mandatory and failure to do so can result in disciplinary action, including termination. This requirement does not apply to employees who do not work in the same department or to parties where neither one supervises or otherwise manages responsibilities over the other.

**5.7.8** Once the relationship is disclosed, the situation will be assessed in light of all the facts and a determination will be made regarding whether one or both parties need to be moved to another job or department. If it is determined that one party must be moved, and there are jobs in other departments available for both, the parties may decide who will be the one to apply for a new position. If the parties cannot amicably come to a decision or the party is not chosen for the position to which he or she applied, the County Manager and the HR Director will decide which party will be moved. That decision will be based on which move will be least disruptive to the organization as a whole. If no other jobs are available for either party, the parties will be given the option of terminating their relationship or resigning.

**5.7.9** All Elected Officials and employees are responsible for knowing and following the provisions of this section.

### **5.8 NEPOTISM.**

**5.8.1** The practice or appearance of nepotism is prohibited by Luna County. Any person elected or appointed to any County public office or position under the laws of the State of New Mexico is prohibited from employing as clerk, deputy or assistant, in such office or position, whose compensation is to be paid out of public funds, any persons related by consanguinity or affinity within the third degree to the person giving such employment, unless such employment shall first be approved by the County Commission; provided, that this prohibition shall not apply where the compensation of such clerk, deputy or assistant shall be at the rate of \$600 or less per year.

**5.8.2** Applicants for employment and current employees must disclose personal or familial relationships with other county employees and elected officials and may not work in the chain of command with related persons. The disclosure must be on the form

**Commented [L23]:** Adapted state statute (10-1-10) to county applicability.

**Commented [L24]:** New section added to address chain-of-command/supervisory authority.

provided by the HR Department and will be included in the appropriate personnel file. Relationships subject to disclosure are spouse, domestic partner, child, step-child, parent, step-parent, parent-in-law, sibling, step-sibling, sibling-in-law, aunts and uncles, step-aunts and uncles, nieces and nephews, step-nieces and nephews.

**Commented [L25]:** Stopping point of review at 2/24/2022  
Work Session with Commissioners

**Commented [L26]:** No changes.

**5.9 EMPLOYEE SAFETY MATTERS.** Luna County maintains a Safety Program intended to promote a safe work environment and working conditions that are free of known dangers. All Elected Officials, Department Directors and employees are responsible for knowing and following this program. A copy of which is available at the HR Department.

**5.10 RELATING TO USE OF COUNTY VEHICLES.**

**Commented [L27]:** Combined with Section 11.6, included provisions on the taxability of take-home vehicles and clarified allowable uses.

**5.10.1** County employees driving county vehicles must have a valid driver's license and be current on the mandatory defensive driving classes required by the County.

**5.10.2** County vehicles shall be operated in compliance with all applicable laws, regulations and ordinances.

**5.10.3** County vehicles are restricted to use in the course and scope of County business, provided that minimal personal use that is incidental to the conduct of County business is allowed and other personal use is prohibited.

**5.10.4** County vehicles may not be taken out of Luna County without advance permission from the County Manager or designee based on a request identifying the destination, itinerary and all persons who will be driving and riding in the vehicle.

**5.10.5** County vehicles, in rare instances, provides for a take-home vehicle for certain employees and the taxability of this benefit to the employee is subject to all guidelines and provisions established by the Internal Revenue Service (IRS).

Specifically, take-home vehicles are a taxable benefit unless they meet all of the following:

**5.10.5.1** The vehicle is not likely to be used more than minimally for personal purposes because of its design;

**5.10.5.2** The vehicle is clearly marked as a Luna County vehicle;

**5.10.5.3** The employee to whom the vehicle is assigned is on-call or call-back status;

**5.10.5.4** The employee to whom the vehicle is assigned is required to commute to and from work in the County vehicle; and

**5.10.5.5** The employee is prohibited from travelling outside of Luna County on personal business.

**5.10.6** Any violation of this policy may result in the revocation of driving privileges by the County Manager and disciplinary action.

**5.11 MANDATORY TRAINING.**

**Commented [L28]:** Rewritten to differentiate between general training requirements and departmental or job specific requirements.

**5.11.1** All Elected Officials, Department Directors and employees shall successfully complete training on specific subjects selected by the HR Department, including but not limited to: sexual harassment; workplace violence; and the Governmental Conduct Act.

**5.11.2** Additional training requirements may be imposed by the County Manager, Elected Officials or Department Directors, through the HR Department,



on legal standards, County programs, policies, requirements and obligations and other appropriate topics. The general training requirements and specific training requirements for departments or individual positions and proof of attendance will be maintained by the HR Department.

#### **5.12 DRUG AND ALCOHOL TESTING POLICY.**

Luna County strives to provide a safe work environment and part of that is voluntary compliance with the Drug-Free Workplace Act of 1988 as well as other applicable federal and state laws. In furtherance of this goal, the County has enacted two drug and alcohol policies:

**5.12.1** The Luna County Drug and Alcohol Policy for CDL drivers; and

**5.12.2** The Luna County Drug and Alcohol Policy applicable to all other employees.

**Commented [L29]:** Updated to reflect new policies.

### **SECTION 6 - CHANGES IN EMPLOYMENT STATUS**

**Commented [L30]:** Reordered, formerly Section 5

#### **6.1 PROMOTION.**

**6.1.1** Luna County employees are encouraged to take advantage of promotion opportunities and apply for higher paying positions for which they qualify. Promotion is a reassignment of an employee to a position, with a higher salary range, different job duties, qualifications and responsibilities.

**6.1.2** Upon promotion, an employee's salary will generally be set at the minimum for the applicable Salary Range, unless otherwise authorized by the HR Department and approved by the County Manager at the recommendation of the Elected Official or Department Director, subject to budgetary restrictions. The written recommendation from the Elected Official or Department Director must include justifications based on qualifications, years of experience, expertise, performance evaluations, etc.

**6.1.3** Employees who accept new positions or promotions will be subject to positional probation as described in Section 4 Employment Classifications.

**6.1.4** All County Employees who are not the subject of current disciplinary action may apply for a promotion or position vacancy for which the employee is qualified.

**6.2 RECRUITMENT AND POSTING PROCEDURE.** Recruitment for promotions will generally be internal only, meaning only current County employees may apply. When appropriate, eligibility may be limited to only current County employees within the same department. However, the County Manager, at the request of the Elected Official, Department Director or HR Department may recruit for promotions externally.

**Commented [L32]:** New section, adapted from new hires provisions.

**6.2.1** "Advertising" for purposes of internal only promotions means placing the job description or a summary thereof on the Luna County website and/or Facebook page and outside the HR Department for a minimum of five (5) working days.

**6.2.2** "Advertising" for purposes of external promotions will be the same as for new hires, Section 3.1.3.

**6.2.3** The County Manager may exempt any promotional position from advertising by written directive to the HR Director and made part of the hiring file for that position.

#### **6.3 SUBMISSION OF APPLICATIONS.**

Applications for promotions shall be the same process as in Section 3.2.

**Commented [L33]:** New section.

#### 6.4 **SELECTION.**

- 6.4.1 The HR Department will screen all applications for compliance with the requirements and remove from consideration all incomplete, nonconforming, unsigned and unqualified or ineligible applications.
- 6.4.2 All County employees not excluded under the preceding subsection will be interviewed as well as any external applicants requested by the hiring authority or County Manager will also be interviewed.
- 6.4.3 The promotional points shall be based on the following elements:
- 6.4.3.1 Ten Percent (10%) overall evaluation by the interviewers based on criteria and factors set out by the Elected Official or Department Director;
  - 6.4.3.2 Ten Percent (10%) for seniority based on total time employed by Luna County in any department;
  - 6.4.3.3 Forty Percent (40%) on a written test, demonstration or presentation; and
  - 6.4.3.4 Forty Percent (40%) on oral examination or interview by a panel of four interviewers with one chosen by the Elected Official or Department Head, one representative or designee of HR Department and other persons, internal or external, as chosen by the County Manager or designee.
- 6.4.5 Upon completion of the hiring process, the HR Department will tabulate the results and present an anonymous ranking to the Department Head or Elected Official.
- 6.4.6 The highest scoring candidate will be offered the position, EXCEPT:
- 6.4.6.1 when one or more candidates are within five percentage (5%) points; or
  - 6.4.6.2 when the Department Head and Elected Official can articulate legal, non-discriminatory grounds for selecting another candidate AND the HR Department concurs in the selection.
- 6.4.7 At any point in the hiring process, the County Manager may intervene and, by written directive, add or remove candidates from the process.
- 6.4.8 The selection process, and all elements thereof, shall be administered only by the HR Department under the supervision of the County Manager.

**Commented [L34]:** New section adapted from LCSO and LCDC CBA process.

#### 6.5 **TEMPORARY ASSIGNMENT.**

- 6.5.1 A temporary assignment occurs when an employee is assigned additional or significantly different duties to meet operational needs or in order to temporarily fill a vacant position for a period not to exceed six (6) months.
- 6.5.2 An employee given a temporary assignment shall receive a temporary salary increase of 5% or the minimum of the new salary range, whichever is greater, and which remains in effect only for the duration of the assignment. The HR Department will review all temporary assignments and, under special circumstances, may recommend a higher increase. The County Manager will have final approval of all temporary assignments and corresponding salary increases.
- 6.5.3 Temporary assignments are limited to instances where a vacant position needs to be filled pending further action, such as hiring, promoting or reclassifying the position and the temporary compensation shall end on the date the employee resumes regular duties or six (6) months after the initial assignment, whichever occurs first.

**Commented [L35]:** Placed 6 month limitation on assignment.

**Commented [L36]:** Temporary hazard pay e.g. COVID as determined in the discretion of the county manager.

**6.6 DEMOTION.** Demotion is a reassignment of an employee to a position with a lower salary range, different job duties, qualifications and responsibilities typically resulting from a disciplinary action, but may also be voluntary.

**Commented [L37]:** Distinguished between 2 types of demotions.

**6.6.1 Disciplinary Demotion.** An employee may be demoted to a vacant position for which the employee is qualified when the employee would otherwise be terminated as result of the disciplinary process. Upon demotion, an employee's salary shall be reduced to the appropriate salary range for the new position.

**6.6.2 Voluntary Demotion.** An employee may also request a voluntary demotion to a vacant or new position for which the employee is qualified and possesses the necessary skills. The employee's salary shall be reduced to the appropriate salary range for the new position.

**6.7 TRANSFER.** Transfer is a reassignment of an employee from one position to another position for non-disciplinary reasons. The salary range for the new position must be equal to or greater than the current position. Involuntary transfers must be organizationally necessary and in the best interest of Luna County. Complaints involving involuntary transfers may be pursued through the grievance process.

**Commented [L38]:** Combined with Reorganization and added flexibility to salary considerations.

**6.8 RESIGNATION.** An employee voluntarily resigning shall submit in writing a notice of resignation to the HR Department at least two weeks in advance of the date of resignation and may be withdrawn within that timeframe, with the consent of the County Manager. Failure to provide a written two-week notice of resignation will render the employee ineligible for rehire under Section 3.6.8

**Commented [L39]:** No substantive changes.

**6.9 ABANDONMENT.** Any Unauthorized Leave from work for three (3) or more scheduled work days in any pay period shall constitute abandonment and will be considered voluntary resignation.

**Commented [L40]:** No changes.

**6.10 LAYOFFS (REDUCTION IN FORCE).** The County Manager shall make the recommendation regarding the need for layoffs based on deletion of positions, shortage of work or funds or other reasons that do not reflect negatively on the employees being laid off. The County Manager's recommendation must be presented for approval to the BOCC in writing at an open meeting:

**Commented [L41]:** Updated to reflect applicable laws, including 10-9-19 NMSA 1978 and 1.7.10.9 NMAC

**6.10.1** The identification of the departments and employees to be laid off;

**6.10.2** The grounds for the reduction in force; and

**6.10.3** A written plan for implementation of the reduction in force.

**6.10.4** Employees scheduled to be laid off shall have the following rights:

**6.10.4.1** A right of first refusal for any open position after the layoff for which the employee is qualified at the same or lower salary than the position currently held, provided that laid off employees shall have priority for such a position;

**6.10.4.2** Affected employees shall compete for such positions only with other employees affected by the layoff;

**6.10.4.3** Affected employees must meet the established requirements for any position for which they seek to exercise the right of first refusal;

- 6.10.4.4 Affected employees offered such a position shall have at least eleven (11) calendar days to accept the position.
- 6.10.5 Employees who decline such an offer shall not lose the right of first refusal status for other positions.
- 6.10.6 The right of first refusal extends until the first effected date of the planned layoff.
- 6.10.7 In implementing any layoff, temporary and probationary employees will be laid off before full-time or part-time regular employees unless they are grant employees or they are filling positions that are determined to be operation-critical by the County Manager.
- 6.10.8 Employees to be laid off must be notified at least one full pay period prior to implementation of the layoff.
- 6.10.9 Accrued annual leave shall be paid with the final paycheck to the employee.
- 6.10.10 Affected employees shall have the right to reemployment in the same position or other positions for which they are qualified for a period of six-months after being laid off.
- 6.10.11 Priority for reemployment shall be:
- 6.10.11.1 Full-time Regular Employees;
  - 6.10.11.2 Part-time Regular Employees;
  - 6.10.11.3 Term Employees;
  - 6.10.11.4 Temporary Employees; and
  - 6.10.11.5 Seasonal Employees.
  - 6.10.11.6 Within each of the preceding classifications, priority shall be given based on seniority.
- 6.10.12 Probationary employees returning to County employment within six months of lay-off will resume their probationary period when hired to any position.
- 6.10.13 An employee that is laid off must reapply to be considered for reemployment.
- 6.10.14 Affected employees offered reemployment shall have eleven (11) days to accept the offer of reemployment or forfeit the right to employment.
- 6.10.15 Affected employees reemployed shall have that period of time they were laid off counted for purposes of seniority and probation and do not have to restart a new probationary period upon reemployment.

## 6.11 **TERMINATION.**

- 6.11.1 Temporary or Seasonal Employees, Probationary Employees and Discretionary Employees may be terminated at any time with or without cause upon the recommendation of Elected Officials and Department Directors of the department to which the employee is assigned.
- 6.11.2 Regular Employees and Term Employees may only be terminated for Cause or Just Cause as determined through the disciplinary process initiated by the Elected Officials and Department Directors of the department to which the employee is assigned.
- 6.11.3 Terminations are administered by the HR Department and must be approved by the County Manager.

## **SECTION 7 – COMPENSATION AND BENEFITS**

### 7.1 **HOURS OF WORK.** The BOCC retains the authority to set

**Commented [L42]:** Distinguished between merit and at-will employees

**Commented [L43]:** And may be terminated in accordance with contract provisions or, in the absence of the same, with or without cause

**Commented [L44]:** Reorder, formerly Section 9

**Commented [L45]:** Rewritten to more clearly explain County expectations and responsibilities.

the hours of operations for all County offices and delegates to the County Manager and Elected Officials the authority to set specific work schedules for each employee.

**7.1.1** Work hours are determined by the Board of County Commissioners through the County Managers and generally consists of forty (40) hours per week, excluding 24/7 Departments (LCSO, LCDC and Dispatch), specialty departments (Starmax) and certain grant positions (PAT, CASA, JJCS, DWI, etc). This section is not a guarantee of work schedule or number of hours worked in any given period.

**7.1.2** Employees will only work their scheduled hours unless some form of leave has been granted or approved but may flex the hours of their work schedule within the same week with advance approval from their immediate supervisor or the County Manager.

**7.1.3** Hours of work includes time spent performing the duties of their position but does not include travel time commuting to and from home to work or meal periods.

**7.1.4** Work schedules may change as needed, as determined at the discretion of the County, and such changes will be communicated to affected employees as soon as feasible, but must be far enough in advance to reasonably allow affected employees to accommodate such changes.

**7.1.5** FLSA Exempt Employees are expected to work hours that coincide with the hours of operation of their Department, but because of the nature of their position, can expect to work hours outside the normal hours of work, as dictated by the needs of the County, without additional compensation.

## **7.2 BREAK PERIODS.**

**7.2.1** While not mandatory, work breaks and authorized meal periods shall be coordinated between the employee and their supervisor. Supervisors may occasionally limit, delay or shift breaks if continuous work is required because of workload, emergency or unusual conditions or when requested by the employee.

**7.2.2** Reasonable break periods will be provided for a breastfeeding mother to express breast milk for her child for up to one (1) year after the child's birth. Designated locations, other than restrooms, shielded from public view and free from intrusion from coworkers and the public will be provided for the breaks. Breastfeeding mothers should make a request to their immediate supervisor and communicate the frequency and duration of the breaks.

**7.2.3** Other authorized breaks may be the result of reasonable accommodations granted at the request of the employee pursuant to the Americans with Disabilities Act or other applicable statute. Such accommodations must be requested and agreed to in accordance with the procedure established by the HR Department.

**7.2.4** Other than meal periods, break periods in this section are considered hours worked.

## **7.3 PAY PERIODS.** All employees shall be paid on the same bi-weekly basis on the schedule established by the County Manager.

## **7.4 OVERTIME.** Luna County complies with the applicable wage and hour requirements, such as FLSA.

**Commented [L46]:** Added sections on breastfeeding and ADA.

**Commented [L47]:** No substantive changes.

**Commented [L48]:** Added section for FLSA Exempt employees and flex time.



7.4.1 Non-Exempt Employees shall not work overtime without authorization from their supervisor. Except in unforeseeable circumstances or emergencies, authorization must be obtained prior to working overtime hours.

7.4.2 Overtime hours accrued shall be recorded for each Non-Exempt Employee and submitted to the Department Director or Elected Official each pay period electronically on approved forms, or as directed by the Payroll Department.

7.4.3 When requested by the employee and granted by their supervisor, hours of work within the same week may be flexed to avoid overtime.

## 7.5 **FINAL PAYCHECK**

7.5.1 An employee who resigns shall receive a final paycheck on or before the first regularly scheduled payday following the employee's effective date of resignation.

7.5.2 An employee who is terminated shall receive a final paycheck by 5:00 p.m. on or before the fifth (5th) day following termination.

7.5.3 In the case of death, final salary and any other accumulated compensation shall be given to the employee's named beneficiary on file in the HR Department.

7.5.4 Final Paychecks are subject to withholding for lost, damaged or unreturned equipment or property.

Commented [L49]: Deleted section on Compensatory Time.

Commented [L50]: Final Paycheck – changed terminated employees to 5 days from 5 business days.

## 7.6 **UNIFORMS AND SPECIFIED CLOTHING**

7.6.1 Certain employees may be required to wear uniforms provided by the County. Uniforms remain the property of Luna County, are not taxable to the individual employee and must be returned at the end of employment.

7.6.2 Certain employees may be required to wear specified clothing provided by the County. Specified clothing is generally taxable to the individual employee and may, with the permission of the County Manager, be retained after the end of employment.

7.6.3 Employees who wish to wear clothing with a County logo, may purchase such items only with the advance approval of the County Manager or designee.

Commented [L51]: Distinguished between uniforms, required and voluntary clothing.

## 7.7 **EQUIPMENT**

7.7.1 Unless otherwise specified in the applicable Job Description, Luna County will provide and retain ownership of equipment and tools necessary for performance of job duties. Such equipment and tools are restricted to use only in the performance of job duties and may not be used for personal benefit by any employee. Unauthorized use of county equipment or tools is subject to disciplinary action, including termination, and referral for criminal investigation.

7.7.2 In rare instances when specialty equipment or tools are necessary for performance of job duties and the County does not own or have access to such items, employees may voluntarily and temporarily provide such equipment or tools with the advance knowledge of their or Elected Official or Department Director. Reimbursement for use or consumption of materials shall be determined by the County Manager in consultation with the Procurement Department.

7.7.3 Safety equipment necessary for performance of job duties will be provided by and remain the property of Luna County and is not taxable to the individual employee.

Commented [L52]: New section.

Individualized safety equipment, such as prescription safety goggles, will be provided by the County but are taxable to the individual employee and do not need to be surrendered or returned at the end of employment.

**7.8 GIFTS AND GRATUITIES.** All employees and representatives of Luna County are subject to the provisions of applicable laws, including but not limited to the Governmental Conduct Act, Sections 10-16-1 through 18, the Gift Act, Section 10-16B-1 through 5, and the Luna County Code of Conduct.

**7.8.1** For the performance of their job, all employees are limited to that compensation and benefits established directly by the BOCC or through their designee, the County Manager.

**7.8.2** Elected Officials' compensation is limited to those amounts authorized by statute as implemented and approved by the BOCC.

**7.8.3** All Luna County employees and Elected Officials are prohibited from receiving or accepting compensation, gifts or other consideration for the performance of their duties or from anyone giving with the intent of modifying or influencing the employee's performance of duties, including encouraging the employee or Elected Official to make purchases from the vendor involved in the gift.

**7.8.4** Employees and Elected Officials may accept gifts, gratuities or honoraria not otherwise prohibited subject to the limits in the Governmental Conduct Act, Gift Act and Luna County Code of Conduct unless acceptance results in the appearance of impropriety or brings into question the integrity of the County, the employee or Elected Official.

**7.8.5** Employees will maintain the highest moral standards and any attempt to influence an employee's performance by a vendor or other person shall be immediately reported to the County Manager.

**7.9 PER DIEM AND MILEAGE.** All payments of and reimbursement for per diem and mileage allowance to Elected Officials and employees require prior approval and will be made pursuant to the Per Diem and Mileage Act, Section 10-8-1 through 8, NMSA 1978 and the approved policies BOCC.

**7.10 REPORTING OF TIME WORKED.** Hours of work are reported in accordance with the policy and procedure established by the County Manager through the Payroll Department.

**7.10.1** Each employee is responsible for clocking in and out electronically when reporting to or leaving work. Failure to do so may result in a delay in the timely receipt of compensation and disciplinary action.

**7.10.2** At the end of each pay period, Elected Officials or Department Directors are responsible for reviewing and approving all time for hours of work submitted by employees no later than 1:00 p.m. on the Monday immediately after the end of the pay period.

**7.10.3** The Payroll Department will keep a cumulative record of all time accrued and used.

**7.11 RETIREMENT BENEFITS.** Elected Officials and Luna County employees, excluding Temporary or Seasonal Employees, working year round in excess of nineteen (19) hours or more

**Commented [L53]:** Updated with references and language from the Governmental Conduct Act and Gift Act and tightened the restrictions on gifts.

**Commented [L54]:** Added statutory sections.

**Commented [L55]:** Rewrote section to account for NovaTime

**Commented [L56]:** No substantive changes.

each week are required to participate in the Public Employees Retirement Association of New Mexico (PERA) and the New Mexico Retirement Health Care Authority (RHCA), and these benefits are governed by respective state statutes and PERA and RHCA rules and provisions. Luna County will pay at least the minimum required employee contribution and the employee will be responsible for the maximum employee contribution unless otherwise approved by the BOCC.

**7.12 INSURANCE BENEFITS.** Luna County provides health insurance for Elected Officials and Luna County employees, excluding Temporary or Seasonal Employees, working thirty (30) or more hours a week for at least fifty (50) weeks per year. Luna County will pay at least the minimum of the percent of the premium for basic health benefits required by law. Luna County may pay more depending on financial limitations. Optional plans such as vision and supplemental policies may be offered as a payroll deduction at the employee's expense.

**7.13 CLASSIFICATION AND COMPENSATION PLAN.**

**7.13.1** A compensation plan for employees shall be adopted by the BOCC. Such plan shall establish a schedule containing a minimum, mid-point and maximum pay range for each position in the classification plan.

**7.13.2** The County Manager shall review the compensation plan regularly and may initiate comparative wage studies and market surveys of salary levels. The County Manager may then recommend changes to the compensation plan to the BOCC for review.

**7.13.3** Factors to be considered in determining the compensation plan include, but are not limited to are:

**7.13.3.1** Prevailing rates of pay for comparable work in similar work situations;

**7.13.3.2** Pay equity between position classifications having substantially similar duties, responsibilities, and qualifications; and

**7.13.3.3** Financial condition of Luna County.

**7.13.4** Recommendations regarding compensation of County employees shall be made annually by the County Manager to the BOCC as part of the presentation of the preliminary budget in May of each year. The recommendations may include one or more of the following elements:

**7.13.4.1** Determinations regarding Salary Ranges for one or more positions pursuant to Section 7.13.2;

**7.13.4.2** Discretionary salary and wage adjustments;

**7.13.4.3** Incentive pay, longevity pay, hazard pay, merit pay and other forms of supplemental pay;

**7.13.4.4** Changes to non-wage compensation and benefits;

**7.13.4.5** Layoffs, Reductions in Force and conversion of positions to independent contractors.

**7.14 HOLIDAYS.** Paid holidays will be designated by the BOCC each year. The following conditions will apply with respect to holidays.

**7.14.1** Temporary/Seasonal Employees, Part-Time and Term Employees regularly working less than forty (40) hours weekly are not entitled to paid holidays,

**Commented [L59]:** Changed "annually" to "regularly" in 7.13.2 and added Section 7.13.4

**Commented [L60]:** Added term employees to 7.14.1 and discretionary holiday pay. Deleted requirement of being working the day before and after a holiday in 7.14.3. Amended section 7.14.4 to reflect current practice of all eligible employees in 24/7 receive holiday pay. Omitted section 7.14.5 allowing exempt employees to flex holidays and substituted it with explanation regarding 10 and 12 hour shift employees and PTO.



unless agreed upon pursuant to an employment agreement or authorized by the County Manager.

**7.14.2** When a holiday falls during an employee's PTO, the day shall be counted as a holiday and not PTO.

**7.14.3** In order to receive pay for a designated paid holiday, employees shall be in a work or PTO status. An employee who is absent without authorization or who is on unpaid leave on their scheduled work day that is a designated holiday shall not receive pay for that holiday.

**7.14.4** Subject to any applicable CBA, employees in 24 hours-per-day/7 days-per-week operations will receive holiday pay unless they are absent without authorized leave or are on unpaid leave for the designated holiday.

**7.14.5** The amount of holiday pay is set by the BOCC, and is typically set as a dollar amount calculated by regular rate of pay times a set number of hours. If the set number of hours is less than the regularly scheduled hours in a shift, the employee will be required to use accrued PTO to make up the difference.

**7.15 PAID TIME OFF (PTO).** Eligible employees (Full-Time Regular Employees, Term Employees regularly working forty (40) hours and those funded by grants or other outside funding sources providing for PTO) shall accrue PTO as follows:

**7.15.1** Accrual Rate.

0 - 60 months of employment = 160 hours/year (6.15 accrued hours/pay period)

61-120 months of employment = 200 hours/year (7.69 accrued hours/pay period)

121-180 months of employment = 240 hours/year (9.23 accrued hours/pay period)

181 months plus of employment = 280 hours/year (10.77 accrued hours/pay period)

**7.15.2** An employee does not accrue PTO for time worked in excess of forty (40) hours per week.

**7.15.3** An employee may accumulate no more than three hundred sixty (360) hours of accrued PTO. If PTO is not taken after an employee accrues 360 hours it will be donated to the Luna County Employee PTO Pool on a monthly basis unless the employee opts out in writing. During critical projects, the County Manager may grant a short term variance to employees from this requirement.

**7.15.4** PTO shall be earned on a pro-rata basis each pay period and will not be authorized for use prior to accrual.

**7.15.5** Upon termination of employment, or taking office as an Elected Official, Chief Deputy, or appointed position, an employee shall be paid for the employee's unused accrued PTO up to a maximum of 360 hours.

**7.15.6** An employee may take PTO immediately prior to separation from employment if approved by the County Manager.

**7.15.7** All eligible employees, including Probationary Employees, must request and obtain approval in advance to use accrued PTO, except when unforeseeable or emergency circumstances prevent such a request.

**7.15.8** PTO requests can only be denied by the County Manager or designee and will not be unreasonably denied subject to the needs of the County and/or department as determined in the sole discretion of the Elected Official or Department Head.

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Commented [L61]: Accrual rate remains unchanged but other changes were made to clarify existing practices and added PTO sell back and to establish PTO Pool rules.

Commented [L62]: Okay with PERA.

Commented [L63]: Either define qualifying emergencies in Definitions section or add "unforeseeable or unanticipated necessity".

**7.15.9** Regular Part-Time Employees, Temporary/Seasonal Employees regularly working less than (40) hours weekly or those funded by grants or other outside sources that do not provide for PTO, Elected Officials, Discretionary Employees do not accrue PTO.

**7.15.10** Employee PTO Donation Pool.

**7.15.10.1** Luna County recognizes that employees may incur emergencies or other catastrophic events that result in a need for time off in excess of accrued or available PTO. To that end Luna County has established the Luna County Employee PTO Pool that is maintained by the HR Department.

**7.15.10.2** In addition to donations pursuant to Section 7.15.3, employees may donate PTO to the Pool by submitting a written request to the HR Department for a specified amount, specified period of time or until otherwise directed by the employee.

**7.15.10.3** PTO donations are to the Pool, not to individual employees or specific departments, and must be whole hours and are accepted based on the donating employee's hourly rate of pay and are awarded on the receiving employee's rate of pay.

**7.15.10.4** Donations, once made, are removed from the donating employee's PTO balance and once removed cannot be returned.

**7.15.10.5** Any employee of Luna County is eligible to request leave from the Pool by submitting a written request to the HR Department, if:

**7.15.10.5.1** They have suffered a qualifying reason as defined by the FMLA or other catastrophic event, such as the loss of their home to fire;

**7.15.11.5.2** The employee has exhausted all accrued leave; and

**7.15.11.5.3** The event necessitating the request has been documented or verified to the satisfaction of the County.

**7.15.10.6** Employees are limited to receiving one-hundred twenty (120) hours in the twelve months preceding the request. Employees are also limited to receiving no more hours than they would otherwise be regularly scheduled to work.

**7.15.10.7** In the event there are insufficient funds in the Pool to fully award all requests, awards will be paid *pro rata* to all recipients. Requests or solicitation of additional donations will then be made by the County Manager and/or HR Department or designee.

**7.15.10.8** Employees receiving disability, worker's compensation or other monetary benefits as a result of the event leading to a request from the Pool, are limited to receiving PTO from the Pool necessary to cover their employee benefits contributions (e.g health insurance premiums) while the employee receives those benefits.

**7.15.11** When declared by the County Manager, Employees may sell back PTO to the County once per year according the terms and conditions set by the County Manager and approved by the BOCC.

**7.16** **BEREAVEMENT LEAVE.** In the event of the death of an employee's spouse, domestic partner, parent, step-parent, parent-in-law, grandparent, grandparent-in-law, child, step-child, foster child, son-in-law, daughter-in-law, grandchild or sibling, the employee shall be

**Commented [L64]:** Added step-parent and foster-child and increased leave to 5 days for 3 days.

entitled to bereavement leave with pay not to exceed five (5) days during any twelve (12) month period.

#### **7.17 ADMINISTRATIVE LEAVE.**

**7.17.1** Administrative Leave With Pay may be granted when deemed appropriate by the County Manager based on the totality of circumstances.

**7.17.2** Employees on Administrative Leave With Pay are subject to directives from the County Manager or designee during their regular work hours or designated hours for shift workers, including but not limited to directives to report to the workplace or other County office. Employees must use accrued PTO to be excused from such work directives while on Administrative Leave With Pay.

**7.17.3** Leave Without Pay (Voluntary) may be granted upon request by the County Manager or designee when deemed appropriate based on the totality of circumstances or imposed (Involuntary) when necessary based on allegations of misconduct are such that the ability to perform the job is severely compromised by the allegations and other such extraordinary circumstances as determined by the County Manager.

**7.17.4** An employee may submit a written request for Voluntary Administrative Leave Without Pay to the County Manager. The request shall include the reason for the request and the expected duration. Unless otherwise mandated by law, the County Manager, may grant regular employees leave without pay (LWOP) for a period not to exceed three (3) months on terms and conditions set by the County Manager when such leave without pay is in the best interest of Luna County.

**Commented [L65]:** Research legality of and add provision on Administrative Leave Without Pay when allegations are such that ability to perform job is undermined or prohibited e.g. domestic violation weapon prohibition, temporary suspension of CDL, etc.

**Commented [L66]:** Added section requiring compliance while on leave with pay and added a section for Administrative Leave Without Pay.

**Commented [L67]:** Required to be respond or report to office within 30 minutes during regular work hours or designated hours for shift workers. Must properly request PTO if planning to be unavailable.

**Commented [L68]:** New provisions allowing for extended leave without pay, commonly referred to as Leave of Absence.

#### **7.18 GENERAL PROVISIONS FOR ADMINISTRATIVE LEAVE WITHOUT PAY AND LEAVES OF ABSENCE.**

**7.18.1** If an employee returns to work within three (3) months of the commencement of Administrative Leave Without Pay, the employee shall either be returned to their former position, if available, or other county employment at their prior rate of pay unless such leave was the result of disciplinary action that included a demotion and/or reduction in pay.

**7.18.2** Unless prohibited by law, prior to commencing Administrative Leave Without Pay, an employee requesting such leave shall use all available PTO except for those going on military leave without pay and those granted a waiver of this requirement by the County Manager.

**7.18.3** An employee on Administrative Leave Without Pay for a full pay period will not accrue PTO and all employees on such leave will not receive Holiday Pay. An employee on Administrative Leave Without Pay will be responsible for timely payments of the employee's portion of any benefits, including but not limited to health insurance premiums, supplemental life insurance premiums, disability insurance premiums. Luna County's employer contributions toward insurance premiums shall continue while the employee is on authorized leave PROVIDED the employee timely makes any mandatory contributions. No payments by either Luna County or the employee toward retirement benefits are made during Administrative Leave Without Pay.

**Commented [L69]:** Amended section to include all types of LWOP and clarified accrual of benefits while on LWOP.

**7.19 OCCUPATIONAL INJURY- WORKER'S COMPENSATION.**

Commented [L70]: No substantive changes.

**7.19.1 Worker's Compensation.** Employees injured on the job or suffering from occupational diseases as defined in the Worker's Compensation Act, Section 52-1-1 et seq., NMSA 1978, may receive Worker's Compensation benefits as prescribed by law.

**7.19.2 Leave Pay.** An employee injured on the job may use accrued PTO for each regularly scheduled work day after the injury occurs for all such days not paid by Worker's Compensation. Worker's Compensation payments to employees who used PTO shall be paid directly to Luna County by the Worker's Compensation carrier or by the employee, if received directly by the employee.

**7.19.3 Reporting Procedure.** All work related injuries must be reported to the employee's Elected Official or Department Director immediately and necessary forms, including the Notice of Accident Form must be submitted to the Risk Management Department within (15) days of accident after which the injury may result in a loss of eligibility for compensation.

**7.19.4 Medical Procedures.** All medical procedures shall comply with the regulations of the New Mexico Workers Compensation Act.

**7.19.5 Return To Work.** An employee shall return to his or her former position or be reassigned to a comparable position if a physician certifies that the employee can return to work. All return to work procedures shall comply with the regulations of the New Mexico Workers Compensation Act.

**7.19.6 Modified Work Schedule.**

**7.19.6.1** An employee returning from worker's compensation disability may return to modified duty if an appropriate position is available and does not present a hardship, inconvenience or additional cost to Luna County. A physician must certify that the employee can return to the modified work schedule.

**7.19.6.2** As allowed by law, the conditions of modified duty will be determined by the employee's Elected Official or Department Director in consultation with the County Manager.

**7.20 CIVIC DUTY LEAVE.** An Employee shall be given necessary time off with pay for the following:

Commented [L71]: Deleted requirement to remit jury duty fees paid by the Court because it can be considered hazard or onerous duty pay

**7.20.1 Jury Duty.** Administrative Leave With Pay for jury duty shall be authorized only for those days that the employee is scheduled to work. If excused by the court during a working day, the employee shall return to duty if at least four (4) hours of work remain in that employee's work day. If the employee does not return to work when at least four (4) hours of work remain, the balance of the day will be charged to PTO or leave without pay.

**7.20.2 Court Appearance Time.** Administrative Leave With Pay for court appearances time shall be authorized when an employee is required by county duties or by subpoena to appear before a court to testify on job related matters.

**7.20.3 Voting.** For purposes of a national, state, or local election, an employee who is

registered to vote will be granted up to two (2) hours Administrative Leave With Pay to vote between the time of opening and the time of closing polls. The employee's supervisor may specify the hours for the leave.

## 7.21 **MILITARY LEAVE**

**7.21.1 Paid Military Leave.** Approved Leave With Pay for military service is granted for authorized active duty, Reserve or National Guard activities for a maximum of fifteen (15) working days during a one-year period corresponding to the Federal Fiscal Year. Military leave must be requested twenty (20) days in advance or as soon as such orders are received by the employee. The employee must furnish military orders or other official documentation prior to leave being granted unless the leave is for emergency purposes.

**7.21.2 Unpaid Military Leave.** Employees voluntarily or involuntarily serving on active duty for more than fifteen (15) working days shall be placed on Administrative Leave Without Pay for the duration of the service period and additional time as specified in the Uniformed Services Employment and Reemployment Act (USERRA). Subject employees may use accrued and accruing PTO during this period.

**7.21.3 Employees Returning from Unpaid Military Leave.** USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Disaster Medical System. USERRA also prohibits employers from discriminating against past and present members of the uniformed services and applicants to the uniformed services. A copy of the entire Act may be obtained through the HR Department.

**Commented [L72]:** Clarified that leave is determined on Federal Fiscal Year.

**7.22 INCLEMENT WEATHER.** Luna County may close one or more offices and send employees home on Approved Leave with Pay due to inclement weather or other circumstances, as deemed appropriate by the County Manager. Employees who are sent home due to inclement weather or other circumstances shall not be charged PTO for all normal work hours missed. Hours paid pursuant to this provision shall not be counted as hours worked for the computation of overtime.

**Commented [L73]:** No substantive changes.

## 7.23 **FAMILY AND MEDICAL LEAVE.**

**7.23.1** Eligible employees are entitled to leave in accordance with the FMLA. Eligible employees are determined by law. A copy of the FMLA may be obtained in the HR Department.

**7.23.2** FMLA Leave may be comprised of any combination or PTO and/or Approved Leave. FMLA Leave must be requested and approved at least thirty (30) days in advance, except in the case of emergencies. Coordination of the use of PTO and Administrative Leave must occur prior to the commencement of FMLA Leave except in the case of emergency.

**7.23.3** No part of FMLA Leave shall be considered a break in employment for purposes of determining seniority or service time and shall not change an employee's anniversary date but is considered a break in employment for retirement benefits purposes when on unpaid FMLA Leave.

**Commented [L74]:** Should we require use of PTO in FMLA leave. No pool if PTO not exhausted.



7.23.4 Employees shall not accrue PTO or receive Holiday Pay while on unpaid FMLA leave.

7.23.5 Employees that qualify are entitled to the FMLA benefit extensions provided in the National Defense Authorization Act.

## SECTION 8 – EMPLOYEE DISCIPLINE

**Commented [L75]:** Include new section of Performance Improvement Plans and/or Last Chance Agreements.

### 8.1 **BASIS FOR DISCIPLINE**

**8.1.1 Discipline.** Disciplinary actions for employees are based on a showing of cause or just cause as defined in this Ordinance. Disciplinary actions will be consistent with governing laws, regulations and policies and will be taken without regard to race, age, religion, national origin, ancestry, gender or gender identity, familial status, veteran status, sexual orientation, genetic information, physical or mental disability or medical condition. No employee will be disciplined for refusing to perform an unlawful act.

**8.1.2 HR Department.** Requests for disciplinary action must be in writing and submitted to the HR Department by the appropriate supervisor. In consultation with the Elected Official, Department Head or supervisor, the appropriate level of discipline will be determined by the HR Department and all formal disciplinary documentation will be prepared by the HR Department.

**8.1.3 Consultation with County Manager.** Termination, involuntary demotion, and suspension without pay require final approval from the County Manager before implementation.

**8.2 **PROGRESSIVE DISCIPLINE.**** An employee shall be progressively disciplined when appropriate. Corrective action will depend on the severity of the infraction(s) and the employee's work record and performance. Because of the serious nature of some infractions, progressive discipline may be inappropriate and the first disciplinary action may be termination.

**Commented [L76]:** Add subsection that in addition to Progressive Discipline steps, disciplinary action may/should include appropriate corrective action e.g. training, re-training, mentor, etc.

**8.2.1 Verbal Reprimand.** When determined by the Supervisor, in consultation with the HR Department, a verbal reprimand is used for minor infractions to inform employees that performance, actions, behavior or conduct needs to change. Supervisors will provide written notification containing details of verbal reprimands to the HR Department for placement in the employee's personnel file.

**Commented [L77]:** Removable in 6 months without further related violation.

**8.2.2 Written Reprimand.** When determined by the Supervisor, in consultation with the HR Department, an employee shall receive a written reprimand because the deficiency or infraction is of a greater degree than that for which a verbal reprimand may be used or when a pattern of minor infractions exists. Written reprimands shall be placed in the employee's personnel file. The employee will be provided a copy of the statement after signing an acknowledgement of receipt. If an employee refuses to sign an acknowledgment of receipt, it shall be deemed insubordination and shall result in further progressive discipline. The employee may respond by noting on the reprimand that the employee does not agree with the reprimand.

**Commented [L78]:** Removable in 12 months without further related violation

**8.2.3 Suspension.** When determined by the Supervisor, in consultation with the HR Department, an employee may be suspended or placed on administrative leave

without pay for a serious offense or for continued inadequate job performance or misconduct. Such suspension will not exceed ninety (90) working days per offense. Suspension of an employee is subject to the Level 3 Grievance procedure. The County Manager must give final approval of any suspension before implementation.

- 8.2.4 Demotion or Reassignment.** An employee may be involuntarily demoted or reassigned for continued inadequate job performance or other cause. The demotion of an employee is subject to the Level 3 Grievance procedure. Reassignment is not subject to the Level 3 Grievance procedure unless it also results in a reduction in pay. The County Manager must give final approval of any demotion or reassignment resulting in a reduction in pay prior to implementation.
- 8.2.5 Corrective Action.** Corrective Action may be imposed in conjunction with or in place of any of the preceding levels of discipline. The purpose of Corrective Action is to educate and prevent similar misconduct or infractions in the future. As such, the Corrective Action should be related to the misconduct or infraction and may include, but is not limited to, additional training, education, policy and/or review, revision or creation, certification, testing or other appropriate measures.
- 8.2.6 Termination.** When progressive discipline has failed to change unacceptable behavior or performance, an employee may be subject to termination. Termination without progressive discipline may be appropriate when the employee has engaged in any behavior, misconduct or job performance that is serious and unacceptable for Luna County employees. Termination may also result from the loss of required certification or licensing or the ability to gain or maintain the required certification necessary to perform the essential functions of the assigned county position. Termination may also result from the inability to perform essential functions of the position. The termination of a regular employee is subject to the formal grievance procedure. The County Manager must give final approval of any termination prior to implementation.
- 8.2.7 Performance Improvement Plans or Last Chance Agreement.** In lieu of termination, when deemed appropriate by the HR Department, an employee may be offered a Performance Improvement Plan or Last Chance Agreement. The terms and conditions of such Plans or Agreements are determined in the sole discretion of the HR Department, in consultation with the Department Head or Elected Official. Acceptance by the employee of a Plan or Agreement is voluntary and unsatisfactory completion or compliance will result in termination without any right to the grievance process.
- 8.2.8 Forgiveness.** Verbal Reprimands and Written Reprimands may be removed from employee Personnel Files under the following circumstances:
- 8.2.8.1** A written request from the Employee requesting removal after six (6) months for Verbal Reprimands or twelve (12) months for Written Reprimands;
  - 8.2.8.2** The Employee has not committed the same or similar infraction within the applicable time period;
  - 8.2.8.3** The Employee has not been subject to more severe discipline for any infraction or misconduct within the applicable time period; and

8.2.8.4 No law, regulation, rule or licensing requirement prohibits the removal of the disciplinary action from the Personnel File; and

8.2.8.5. Approval by the County Manager, HR Department and County Attorney.

8.3 **PRE-DETERMINATION HEARING.** Only eligible employees who have completed the probationary period and are notified of possible suspension, demotion, reassignment with loss of pay or termination shall be entitled to a Pre-Determination Hearing before the appropriate Elected Official, Department Director, or designee.

**Commented [L79]:** Added subsection on agreed upon discipline which can take any form and consent waives rights.

- 8.3.1 **Notice.** An employee shall be notified in writing, at least three (3) business days prior to date and time of a Pre-Determination Hearing. The basis for the proposed disciplinary action, all supporting evidence, the time and place, and date of hearing shall be included in the notification.
- 8.3.2 **Administrative Leave/Administrative Reassignment.** An employee may be placed on administrative leave with or without pay or administrative reassignment pending the outcome of an investigation or hearing. All administrative reassignments will be administered by the HR Department in consultation with the County Manager.
- 8.3.3 **Hearing Procedure.** The Pre-Determination Hearing shall be informal and shall be conducted by the employee's Elected Official, Department Director or designee. The purpose of the hearing is to provide the employee with a reasonable opportunity to address or refute the basis for the proposed disciplinary action. The employee may be accompanied by a representative, however the representative may only observe and may not participate in any other manner unless expressly allowed by the Hearing Officer. The HR Department or other management employee may also be present at the hearing but may not participate unless expressly allowed by the Hearing Officer. The employee may respond to the notice of disciplinary action in writing prior to or on the date and time of the hearing in conjunction with or in lieu of appearing at the hearing.
- 8.3.4 **Waiver.** The Pre-Determination Hearing may be waived by the employee in which case the proposed disciplinary action takes effect immediately.
- 8.3.5 **Decision.** In consultation with the HR Department and/or County Attorney, the Hearing Officer shall render a final decision within five (5) business days of the hearing or receipt of the written response to the disciplinary hearing.
- 8.3.6 **Appeal.** An employee dissatisfied with the final decision may file an appeal as outlined in the formal grievance procedure.
- 8.3.7 **Consent to Discipline.** At any point in the disciplinary or grievance process, the employee and County Manager, through the HR Department, may enter into an agreement regarding resolution of pending disciplinary matters on terms and conditions agreeable to both parties but must include a waiver of grievance rights by both parties.

## SECTION 9 – GRIEVANCE PROCEDURE

9.1 **PURPOSE.** The purpose of the grievance procedure is to provide employees with a process for resolving complaints or problems related to violations of policies or procedures,

**Commented [L80]:** Streamlined process by eliminating Informal Grievances and setting 3 levels, with the final level being reserved for only serious disciplinary actions.

**Commented [L81]:** Added subsection on agreed upon discipline which can take any form and consent waives rights.



unsafe, improper or illegal working conditions or disciplinary matters.

**9.2 ELIGIBILITY.** All classifications of Luna County employees have the right to avail themselves of the Grievance Procedure and to do so must submit a written grievance to the HR Department within fifteen (15) calendar days, in the absence of exigent circumstances, of the last occurrence or discovery of the action or inaction generating the grievance containing:

- 9.2.1 The date, time and place of the action or inaction generating the grievance;
- 9.2.2 All persons involved in or witness to the action or inaction generating the grievance;
- 9.2.3 Policy or procedure being violated or the unsatisfactory working condition or disciplinary action imposed;
- 9.2.4 The specific relief requested; and
- 9.2.5 Be signed and dated by the employee.

**Commented [L82]:** Check for consistency with employee descriptions and rights therein.

**9.3 LEVEL 1 GRIEVANCE – HR DEPARTMENT OR DESIGNEE.**

Upon timely submission of a valid employee grievance, the HR Department, or designee, will have fifteen (15) calendar days to attempt to resolve the matter with the employee and appropriate Department Head or Elected Official. The HR Department may utilize any method deemed appropriate, including mediating, arbitrating or directive.

**9.4 LEVEL 2 GRIEVANCE – COUNTY MANAGER OR DESIGNEE.**

An employee or Department Head or Elected Official may appeal a Level 1 Grievance resolution, by timely submitting a Notice to the HR Department within fifteen (15) calendar days. The County Manager, or designee, will have fifteen (15) calendar days to resolve the matter by any method deemed appropriate, including mediating, arbitrating or directive.

**9.5 LEVEL 3 GRIEVANCE – GRIEVANCE HEARING.**

Level 3 Grievance procedure is only available to employees appealing a Level 2 Grievance resolution imposing or upholding serious disciplinary action, namely suspension, demotion, involuntary transfer resulting in loss of pay or termination. The Notice must be submitted to the HR Department within (15) calendar days identifying the specific provisions of the resolution being grieved, the relief requested and any policies, procedures, law or other persuasive material supporting the requested relief.

**9.5.1** The HR Department shall appoint an impartial hearing officer to act as the Grievance Hearing Officer. The Grievance Hearing Officer may be any person, including non-employees, except for a person in the aggrieved employee's chain of command.

**9.5.2** The HR Department, in conjunction with the Grievance Hearing Officer, shall issue a Notice of Grievance Hearing within five (5) business days of receipt of a Notice from the aggrieved employee setting a hearing date no later than thirty (30) calendar days after service of the Notice of Grievance Hearing on the aggrieved employee. The hearing date may be extended by written request for either party for reasonable cause.

**9.5.3** The Grievance Hearing shall be conducted in a semi-formal and professional Manner, the Rules of Evidence shall not apply and relevance shall be the sole basis for the admissibility of evidence and testimony. The aggrieved employee and Luna County

may be represented by legal counsel, at their own expense.

**9.5.4** The aggrieved employee shall present its case first, including witnesses, documentation and other evidence. Upon completion, Luna County shall then be allowed to present its case, including witnesses, documentation and other evidence. Both sides may cross-examine and will have one opportunity to present rebuttal evidence. Opening and closing statements may be made at the option of the Grievance Hearing Officer.

**9.5.5 Final Decision.** The Grievance Hearing Officer will issue a final written decision in writing within fifteen (15) business days of the conclusion of the Grievance Hearing unless extended in writing for reasonable cause. Notice of any extension shall be given to the aggrieved employee and Luna County. The Grievance Hearing Officer may accept, reject or modify the Level 2 resolution and, if modifying, impose any disciplinary action allowed by this Ordinance.

**Commented [L84]:** Defined Grievance Officer's authority to impose discipline.

## **9.6 COMPLAINTS REGARDING DISCRIMINATION, SEXUAL AND WORKPLACE HARASSMENT.**

**9.6.1** Luna County expressly prohibits employees and visitors from engaging in conduct that constitutes sexual harassment, workplace harassment, discrimination or retaliation and perpetrators of such conduct will be subject to discipline, up to and including termination.

### **9.6.2 Responsibility to Report.**

**9.6.2.1** An employee who believes they have been subjected to retaliation, discrimination, sexual or workplace harassment is encouraged, but not required, to immediately let the offending person know the conduct is offensive and/or unwelcome.

**9.6.2.2** Employees who witness or become aware of retaliation, discrimination, sexual or workplace harassment are required to submit a complaint to the HR Department within fifteen (15) calendar days and failure to do so can result in disciplinary action, up to and including termination.

**9.6.3** Complaints regarding sexual harassment, workplace harassment, retaliation or discrimination based on race, age, religion, national origin, ancestry, gender, gender expression or gender identity, marital or familial status, veteran status, sexual orientation, genetic information, physical or mental disability or medical condition, shall be submitted to the HR Department in writing within fifteen (15) calendar days, in the absence of exigent circumstances, of the last occurrence or discovery of the conduct generating the complaint and must contain:

**9.6.3.1** The date, time and place of the action or inaction generating the complaint;

**9.6.3.2** All persons involved in or witness to the action or inaction generating the complaint;

**9.6.3.3** The specific relief requested, if any; and

**9.6.3.4** Be signed and dated by the employee.

**9.6.4** All complaints of retaliation, sexual harassment, workplace harassment or prohibited discrimination will be promptly investigated and, when appropriate, disciplinary action against the perpetrator will be initiated by the HR Department.

**Commented [L85]:**

**Commented [L86R85]:** Rewrote section to include all forms of harassment. Separate policy too.

## SECTION 10 – MISCELLANEOUS

**10.1 DESIGNATED WORK AREAS.** All employees shall be ready to work at their designated work areas on time and continue working until the end of the work day.

Commented [L87]: No change.

**10.2 PERSONAL BUSINESS.**

**10.2.1** Excessive personal business or personal business which is disruptive to the work environment is prohibited during work hours and violation of this provision can result in disciplinary action, including termination, and loss of privileges such as the right to make or receive visitors or phone calls or to have a cell phone in their designated work area.

**10.2.2** Personal business conducted outside work hours that impedes or prohibits an employee's ability to perform their job duties or that creates a conflict of interest or the appearance of impropriety is also prohibited.

Commented [L88]: Business outside work hours that impedes ability to do job or that creates a conflict of interest or results in the appearance of impropriety.

**10.3 COUNTY PROPERTY.** County property and equipment is intended for use in the performance of job duties and, except for de minimus personal use, the intentional misuse or use of county property or equipment for personal business is prohibited. Except in the ordinary course of business, Luna County property, equipment, records or other material should not be removed from the premises of Luna County offices except as allowed by applicable policies or practices or as permitted by the appropriate Elected Official or Department Director.

Commented [L89]: Minor changes to clarify standard.

**10.4 RETURN OF COUNTY PROPERTY.** At the time that an Employee resigns or employment is terminated, the employee shall return all Luna County property to the appropriate Elected Official, Department Director, or HR Department, as directed by their supervisor.

Commented [L90]: No substantive changes.

Commented [L91R90]:

**10.5 DRESS AND APPEARANCE.** Employees are constantly in the public eye, consequently it is important that employees present a professional image to the public. Employees must always be clean and appropriately dressed in clothing suitable for their work assignments. Elected Officials or Department Directors may promulgate reasonable and appropriate dress codes for their respective departments after consultation with the HR Department and with approval by County Manager.

Commented [L92]: No changes.

**10.6 CONTENTS OF PERSONNEL FILE.** Subsequent to hiring, a separate record file shall be prepared and maintained on each employee. These records shall be kept in the HR Department or in a place designated by the County Manager. It is the responsibility of the HR Department to ensure that the records of the employees are completed; are up-to-date; and remain confidential. The file shall contain but is not limited to the following:

Commented [L93]: No substantive changes.

**10.6.1** The original Application form;

**10.6.2** The original Personnel Action Form showing occupation, date of hire and salary;

**10.6.3** Documentation related to disciplinary action;

**10.6.4** Performance evaluations and commendations;

**10.6.5** Letters, forms, memorandums and certificates;

**10.6.6** Other related actions/forms concerning PERA application and payroll deductions;

**10.6.7** Employee benefits information; and

10.6.8 Any and all relevant personnel documentation.

**10.7 MAINTENANCE OF PERSONNEL FILES.** Public access to personnel files is restricted except as required by the New Mexico Inspection of Public Records Act. Physical access to an employee records is subject to the control of the HR Department but employees or persons with written authorization from the employee may be granted access to the personnel file on the terms and conditions set by the HR Department.

**Commented [L94]:** No substantive changes.

**10.8 WEAPONS IN THE WORKPLACE.**

**Commented [L95]:** Combined this section and Concealed Carry section and added County Manager permission.

**10.8.1** Subject to applicable law, Luna County employees are prohibited from carrying or possessing a handgun, firearm or other prohibited weapon on Luna County property, with the exception of law enforcement personnel, employees who possess a New Mexico Concealed Carry Permit and employees who have requested and received permission from the County Manager.

**10.8.2** Luna County employees permitted to carry or possess a weapon under this provision, must comply with all laws, rules, regulations and conditions of the permission.

**10.8.3** Luna County employees with New Mexico Concealed Carry Permits must notify the County Manager in writing prior to carrying or possession a weapon on County Property.

**10.8.4** Luna County employees, other than law enforcement, who wish to carry or possess a weapon on County Property must first request and receive authorization from the County Manager.

**10.8.5** Luna County reserves the right to refuse or disallow any employee from carrying a weapon in or on Luna County property and written authorization may be revoked without cause at any time.

**10.8.6 County Property.** This Ordinance covers all county owned or leased buildings and vehicles.

**10.8.7 Prohibited Weapons.** Prohibited weapons include any form of weapon or explosive device restricted under State or Federal regulations (chemical dispensing devices, such as pepper spray that are sold commercially for personal protection are exempt from this Ordinance).

**10.8.8 Searches.** Luna County reserves the right to conduct searches of any Luna County property.

**10.8.9 Violations.** Any employee who violates this Section shall be subject to disciplinary action, up to and including termination.

**10.9 ADDITIONAL RULES.** Employees shall adhere to all additional lawful rules, policies, directives and requests stated verbally or in writing by their supervisors. Employees are required to follow all standards, rules, procedures, and policies that are expected in the workplace. Failure to do so constitutes insubordination and can result in disciplinary action, up to and including termination.

**Commented [L96]:** Added language regarding insubordination and discipline.

**10.10 SEVERABILITY.** If any part of this Ordinance is found to be unconstitutional, invalid or otherwise in conflict with the laws of the State of New Mexico or the United States of America, the validity of the remaining portions of this Ordinance shall not be affected.

**Commented [L97]:** No changes.

AMENDED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

**BOARD OF COMMISSIONERS OF LUNA COUNTY:**

**ATTEST:**

\_\_\_\_\_  
Linda M. Smrkovsky, Chair  
District 2

\_\_\_\_\_  
Berenda McWright,  
County Clerk

\_\_\_\_\_  
Barbara Reedy, Commissioner  
District 1

\_\_\_\_\_  
John S. Sweetser, Commissioner  
District 3

*Be it remembered that at a Regular Meeting of the Board of County Commissioners of Luna County in Deming New Mexico, on the 24<sup>th</sup> day of October 2022, the following proceedings were had and entered of record.*

**RESOLUTION NO. 22-80**

**CALL TO AMEND ORDINANCE 101**

**WHEREAS**, pursuant to Section 4-37-1, NMSA 1978, grants Counties, through the Board of County Commissioners the power to make, publish and repeal ordinances;

**WHEREAS**, Section 4-37-7, NMSA 1978, Ordinances governs the proposal of ordinances.

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of County Commissioners hereby give notice of its intent to consider the amendment of Ordinance 101; PROCEDURE FOR ACCEPTING DONATIONS OF REAL PROPERTY, at the Special Meeting on October 24, at 2:00 p.m. or as soon thereafter as the matter may be heard in the Luna County Courthouse, 700 S. Silver Ave., Deming, New Mexico.

**BE IT FURTHER RESOLVED** that the Luna County Manager is authorized to take all necessary action necessary to properly place the issue of the amendment of Ordinance 101 before the Board of County Commissioners, including but not limited to, the publication of title and a general summary of the proposed adoptions and making a copy of the proposed available to interested persons beginning with the date of publication, but no later than two weeks prior to the meeting at which it will be considered.

**DONE THIS 24<sup>th</sup> DAY OF OCTOBER, 2022**

by the Board of County Commissioners of Luna County

**ATTEST:**

\_\_\_\_\_  
Linda M. Smrkovsky, Chairperson  
Commissioner, District 2

\_\_\_\_\_  
Berenda McWright,  
County Clerk

\_\_\_\_\_  
Barbara L. Reedy,  
Commissioner, District 1

\_\_\_\_\_  
John S. Sweetser,  
Commissioner, District 3

*Be it remembered that at the Special Meeting of the Board of County Commissioners of Luna County in Deming New Mexico, on the 24<sup>th</sup> day of October 2022, the following proceedings were had and entered of record.*

**RESOLUTION 22-81**

**CALL TO AMEND ORDINANCE 23**

**WHEREAS**, pursuant to Section 4-37-1, NMSA 1978, grants Counties, through the Board of County Commissioners the power to make, publish and repeal ordinances;

**WHEREAS**, Section 4-37-7, NMSA 1978, Ordinances governs the proposal of ordinances.

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of County Commissioners hereby give notice of its intent to consider the amendment of Ordinance 23; Personnel Ordinance, at the Regular Meeting on November 10, at 10:00 a.m. or as soon thereafter as the matter may be heard in the Luna County Courthouse, 700 S. Silver Ave., Deming, New Mexico.

**BE IT FURTHER RESOLVED** that the Luna County Manager is authorized to take all necessary action necessary to properly place the issue of the amended Ordinance 23 before the Board of County Commissioners, including but not limited to, the publication of title and a general summary of the proposed adoptions and making a copy of the proposed available to interested persons beginning with the date of publication, but no later than two weeks prior to the November 10, 2022 meeting.

**DONE THIS 24<sup>th</sup> DAY OF OCTOBER, 2022**

**BOARD OF COUNTY COMMISSIONERS OF LUNA COUNTY**

**ATTEST:**

\_\_\_\_\_  
Linda M. Smrkovsky, Chairperson  
Commissioner, District 2

\_\_\_\_\_  
Berenda McWright,  
County Clerk

\_\_\_\_\_  
Barbara L. Reedy,  
Commissioner, District 1

\_\_\_\_\_  
John S. Sweetser,  
Commissioner, District 3

*Be it remembered that at the Special Meeting of the Board of County Commissioners of Luna County in Deming New Mexico, on the 24<sup>th</sup> day of October 2022, the following proceedings were had and entered of record.*

**RESOLUTION # 22-82**

**A DECLARATION OF EMERGENCY BY THE BOARD OF COUNTY COMMISSIONERS OF LUNA COUNTY RELATED TO HAZARDOUS FLOODING CAUSED BY SUBSTANTIAL HEAVY RAINS IN AND AROUND LUNA COUNTY**

**WHEREAS**, pursuant to NMSA 1978, Section 4-37-1, the Board of County Commissioners has powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of this county and its inhabitants; and,

**WHEREAS**, Luna County has suffered severe damage caused by hazardous flooding due to substantial and enduring rainfall on or about August 22<sup>nd</sup>, 2022 and extending through October 16<sup>th</sup>, 2022; and,

**WHEREAS**, extensive damage was caused to multiple areas around the unincorporated areas of Luna County to include state and county roads; cattle guards, culverts, and public drainage systems; riverbanks, diversion dams, and other water mitigation structures causing substantial risk to public and private properties, and restricting access to food and water and other necessary basic county services; and,

**WHEREAS**, this incident has resulted in undue human suffering and hardship and threatens the safety, health, welfare, and well-being of the citizens and local economy of Luna County; and,

**WHEREAS**, all locally available public and private resources available to mitigate and alleviate the effects of this disaster have been insufficient to meet the needs of the situation, make repairs, and protect the public safety;

**NOW, THEREFORE**, the Board of County Commissioners of Luna County, New Mexico, by virtue of the authority provided by NMSA 1978, Section 4-37-1, and by the New Mexico Civil Emergency Preparedness Act, NMSA 1978, Sections 12-10-01 to 12-20-11, do hereby declare Luna County to be under a state of emergency, and issues the following declaration:

- 1) A state of emergency exists in Luna County requiring the Board to exercise its lawful and necessary emergency powers for expending local resources; requesting immediate financial aid and material assistance that may be available from the State of New Mexico to mitigate the risks of hazardous flooding and the inherent threats to life and property.
- 2) The Board also authorizes the County Manager and his designees to do all things necessary or required to assist in the mitigation of the emergency conditions caused by the substantial rainfall and hazardous flood conditions.



**APPROVED AND ADOPTED THIS 24TH DAY OF OCTOBER, 2022.**

**BOARD OF COUNTY COMMISSIONERS  
LUNA COUNTY, STATE OF NEW MEXICO**

**ATTEST:**

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Linda M. Smrkovsky, Chairperson  
Commissioner, District 2

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Berenda McWright  
County Clerk

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Barbra L. Reedy  
Commissioner, District 1

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John S. Sweetser  
Commissioner, District 3