

**TITLE I: GENERAL PROVISIONS**

Chapter

**10. RULES OF CONSTRUCTION; GENERAL PENALTY**



## **CHAPTER 10: RULES OF CONSTRUCTION; GENERAL PENALTY**

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### **§ 10.01 TITLE OF CODE.**

This 2002 codification of ordinances by and for the Village of Tularosa, New Mexico, shall be designated as the "Tularosa Code of Ordinances," and may be cited herein as "this code" or "this code of ordinances."

### **§ 10.02 INTERPRETATION.**

Unless otherwise provided herein or by law or implication required, the same rules of construction, definition and application shall govern the interpretation of this code as those governing the interpretation of state law.

**§ 10.03 APPLICATION TO FUTURE ORDINANCES.**

All provisions of Title I, compatible with future legislation, shall apply to ordinances hereafter adopted amending or supplementing this code unless otherwise specifically provided.

**§ 10.04 CAPTIONS.**

Headings and captions used in this code other than the title, chapter, subchapter and section number are employed for reference purposes only and shall not be deemed a part of the text of any section.

**§ 10.05 DEFINITIONS.**

(A) Words and phrases shall be taken in their plain, ordinary and usual sense. However, technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.

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

***APPOINTED OFFICIAL.*** Any person appointed in accordance with state law or any person appointed to a board, commission or advisory body, in accordance with this code of ordinances. ***APPOINTED OFFICIALS*** are not subject to the provisions of the village personnel ordinance and shall serve at the pleasure of the Governing Body and the Mayor.

***CLASSIFIED EMPLOYEE.*** A person employed by the village who is entitled to grievance in accordance with the personnel policies and work rules and who is not exempt under the Fair Labor Standards Act.

***CODE*** or ***CODE OF ORDINANCES.*** The village's code of ordinances, as modified by amendment, revision and adoption of new chapters, subchapters or sections.

***COUNTY.*** Otero County, New Mexico.

***ELECTED OFFICIAL.*** Those village officials elected under the laws of the state, specifically, the Mayor, Trustees and the Municipal Judge.

***GOVERNING BODY.*** The Mayor and the Trustees are the Governing Body. The corporate authority of the municipality is vested in this body.

**INTERPRETATION.** For the purpose of this code and ensuing chapters and appendices and when not inconsistent with the context:

- (a) Words used in the present tense include the future;
- (b) Words in the future tense include the present;
- (c) Words in the plural include the singular;
- (d) Words in the singular include the plural;
- (e) The word **SHALL** is always mandatory and not merely directory; the word **MAY** is permissive; and
- (f) The impersonal pronouns **HE**, **HIM**, and **HIMSELF** shall denote either the feminine or the masculine gender.

**MAYOR.** The elected officer of the village who exercises administrative control and supervision over the village and hires or appoints directors of all village departments and other employees pursuant to state law. Where applicable, the term **MAYOR** means those persons whose authority has been granted by the **MAYOR**.

**MONTH.** A calendar month.

**MUNICIPAL OFFICER.** Any appointed employee. A **MUNICIPAL OFFICER** is limited to a **DEPARTMENT DIRECTOR**.

**OATH.** An affirmation in all cases in which, by law, an affirmation may be substituted for an **OATH** and, in such cases, the words **SWEAR** and **SWORN** shall be equivalent to the words **AFFIRM** and **AFFIRMED**.

**OFFICER, OFFICE, EMPLOYEE, COMMISSION or DEPARTMENT.** An officer, office, employee, commission or department of the village unless the context clearly requires otherwise.

**PERSON.** Extends to and includes, without limitation, person, persons, firm, corporation, copartnership, trustee, lessee or receiver. Whenever used in any clause prescribing and imposing a penalty, the terms **PERSON** or **WHOEVER**, as applied to any unincorporated entity, shall mean the partners or members thereof, and as applied to corporations, the officers or agents thereof.

**PRECEDING or FOLLOWING.** Next before or next after, respectively.

**SIGNATURE or SUBSCRIPTION.** Includes a mark when the person cannot write.

**STATE.** The State of New Mexico.

**VILLAGE** or **MUNICIPALITY.** The Village of Tularosa, New Mexico, a fully empowered municipal corporation. **VILLAGE, MUNICIPALITY** or **MUNICIPAL** shall always refer to the village.

**WRITTEN.** Any representation of words, letters or figures, whether by printing or otherwise.

**YEAR.** A calendar year unless otherwise expressed.  
(Am. Ord. 204, passed 5-20-2003)

#### **§ 10.06 RULES OF INTERPRETATION.**

The construction of all ordinances of the village shall be by the following rules unless the construction is plainly repugnant to the intent of the Governing Body or of the context of the same ordinance:

(A) **AND** or **OR.** Either conjunction shall include the other as if written and/or, if the sense requires it.

(B) *Acts by assistants.* When a statute or ordinance requires an act to be done which, by law, an agent or deputy as well may do as the principal, the requirement shall be satisfied by the performance of the act by an authorized agent or deputy.

(C) *General term.* A general term following specific enumeration of terms is not to be limited to the class enumerated unless expressly so limited.

#### **§ 10.07 SEVERABILITY.**

The provisions of this code of ordinances are severable, and if any provision, subchapter, section, division, clause, sentence or part thereof is held to be illegal, invalid, unconstitutional or inapplicable, to any person, persons, circumstances, situation or otherwise, the illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining sentences, clauses, divisions, sections, subchapter or parts of this code of ordinances, or their applicability to other persons, circumstances or situations.

#### **§ 10.08 REFERENCE TO OTHER SECTIONS.**

Whenever in one section reference is made to another section hereof, the reference shall extend and apply to the section referred to as subsequently amended, revised, recodified or renumbered unless the subject matter is changed or materially altered by the amendment or revision.

**§ 10.09 REFERENCE TO OFFICES.**

Reference to a public office or officer shall be deemed to apply to any office, officer or employee of the village exercising the powers, duties or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the functionary.

**§ 10.10 ERRORS AND OMISSIONS.**

(A) If a manifest error is discovered, consisting of the misspelling of any words; the omission of any word or words necessary to express the intention of the provisions affected; the use of a word or words to which no meaning can be attached; or the use of a word or words when another word or words was clearly intended to express the intent, the spelling shall be corrected and the word or words supplied, omitted or substituted as will conform with the manifest intention, and the provisions shall have the same effect as though the correct words were contained in the text as originally published.

(B) No alteration shall be made or permitted if any question exists regarding the nature or extent of the error.

**§ 10.11 OFFICIAL TIME.**

The official time, as established by applicable state/federal laws, shall be the official time within the village for the transaction of all village business.

**§ 10.12 REASONABLE TIME.**

(A) In all cases where an ordinance requires an act to be done in a reasonable time or requires reasonable notice to be given, reasonable time or notice shall be deemed to mean the time which is necessary for a prompt performance of the act or the giving of the notice.

(B) (1) The time within which an act is to be done shall be computed by excluding the first day and including the last.

(2) If the last day be a Saturday, Sunday or village holiday, it shall be excluded.

**§ 10.13 ORDINANCES REPEALED.**

This code, from and after its effective date, shall contain all of the provisions of a general nature pertaining to the subjects herein enumerated and embraced. All prior ordinances pertaining to the subjects treated by this code shall be deemed repealed from and after the effective date of this code.

**§ 10.14 ORDINANCES UNAFFECTED.**

All ordinances of a temporary or special nature and all other ordinances pertaining to subjects not embraced in this code shall remain in full force and effect unless herein repealed expressly or by necessary implication.

**§ 10.15 EFFECTIVE DATE OF ORDINANCES.**

An ordinance shall not become effective until five days after it has been published unless passed and approved as an emergency measure, in which event it shall become effective immediately following publication or at a subsequent date determined by the Governing Body.

**§ 10.16 REPEAL OR MODIFICATION OF ORDINANCE.**

(A) Whenever any ordinance or part of an ordinance shall be repealed or modified by a subsequent ordinance, the ordinance or part of an ordinance thus repealed or modified shall continue in force until the due publication of the ordinance repealing or modifying it when publication is required to give effect thereto unless otherwise expressly provided.

(B) No suit, proceedings, right, fine, forfeiture or penalty instituted, created, given, secured or accrued under any ordinance previous to its repeal shall in any way be affected, released or discharged, but may be prosecuted, enjoyed and recovered as fully as if the ordinance had continued in force unless it is otherwise expressly provided.

(C) When any ordinance repealing a former ordinance, clause or provision shall be itself repealed, the repeal shall not be construed to revive the former ordinance, clause or provision unless it is expressly provided.

**§ 10.17 ORDINANCES WHICH AMEND OR SUPPLEMENT CODE.**

(A) If the Governing Body shall desire to amend any existing chapter, subchapter or section of this code, the chapter, subchapter or section shall be specifically repealed and a new chapter, subchapter or section, containing the desired amendment, substituted in its place.

(B) (1) Any ordinance which is proposed to add to the existing code a new chapter, subchapter or section shall indicate, with reference to the arrangement of this code, the proper number of the chapter, subchapter or section.

(2) In addition to the indication thereof as may appear in the text of the proposed ordinance, a caption or title shall be shown in concise form above the ordinance.

**§ 10.18 SECTION HISTORIES; STATUTORY REFERENCES.**

(A) As histories for the code sections, the specific number of the old code section, original ordinance and the most recent three amending ordinances, if any, are listed following the text of the code section. Example: (‘75 Code, § 4-1-1) (Ord. 93, passed 1-20-1980; Am. Ord. 98, passed 1-20-1990; Am. Ord. 99, passed 1-20-2000)

(B) (1) If a statutory cite is included in the history, this indicates that the text of the section reads substantially the same as the statute. Example: (NMSA § 3-8-9) (‘75 Code, § 3-1-1) (Ord. 90, passed 1-20-1980; Am. Ord. 92, passed 1-20-1990)

(2) If a statutory cite is set forth as a “statutory reference” following the text of the section, this indicates that the reader should refer to that statute for further information. Example:

**§ 39.01 MUNICIPAL ELECTION CODE.**

The Municipal Election Code, NMSA § 3-8-9, as amended and as supplemented from time to time, shall govern the conduct of all aspects of all municipal elections, except when the Municipal Election Code is silent on a matter, then the State Election Code, NMSA Ch. 1, shall govern, as appropriate; however, if any provision of either the Municipal Election Code or the State Election Code is inconsistent with the terms hereof, this chapter shall take precedence.

(‘75 Code, § 22-7-1) (Ord. 92, passed 1-20-1990)

***Statutory reference:***

*Terms of the Municipal Election Code, see NMSA §§ 3-8-1 et seq. and §§ 3-9-1 et seq.*

*Terms of the State Election Code, see NMSA Ch. 1*

**§ 10.19 COPIES OF CODE.**

The Tularosa Code of Ordinances may be inspected at the Village Office at 705 St. Francis Drive, Tularosa, New Mexico during normal business hours and a copy may be obtained from the Village Clerk upon payment of a reasonable reproduction fee.

(Ord. 203, passed 4-15-2003)

**§ 10.99 GENERAL PENALTY.**

Except as to Chapter 32, any person who violates any provision of this code for which another penalty is not specifically provided shall, upon conviction, be subject to a fine not exceeding \$500 or by imprisonment not exceeding 90 days or both unless a different specific penalty is provided. Each separate violation shall constitute a separate offense and, upon conviction, each day of violation shall constitute a separate offense.

***Statutory reference:***

*Penalty for misdemeanor, see NMSA § 3-17-1*