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CITY OF COSTA MESA
PERSONNEL RULES AND REGULATIONS

RULE 1 - PURPOSE

The objectives of these Rules are to facilitate efficient and economical services to the public and to provide a fair and equitable system of personnel management in the municipal government. These Rules set forth those procedures which insure similar treatment for those who compete for employment and promotion and the obligations, rights, privileges, benefits and prohibitions which are placed upon all employees in the classified service of the City.

At the same time, within the limits of administrative feasibility, recognition shall be given to the fact that individuals' facts and circumstances differ, that no two individuals react alike to reward and discipline, or to uniform motivation and encouragement. For this reason, latitude shall be given to the Personnel Officer in the execution of his/her duties and responsibilities relating to employee morale and discipline and the manner of application of these rules.

RULE 2 - INTENT

It is the intent of these Rules to recognize the following principles: The City Council and all of the citizens of Costa Mesa have the right to expect that the City will employ the best qualified persons available; that the tenure of every City employee will be based upon a demonstrative need for the work performed, availability of funds, faithful and effective performance, proper personal conduct, and continuing fitness and qualification for the position; and that employees will be encouraged, trained and developed to assure optimum performance.

Each regular employee of the City of Costa Mesa has the right to expect that he/she will be fully informed of his/her duties and responsibilities; that he/she will be provided with adequate administrative and supervisory direction; that he/she will be informed of how well he/she is performing his/her duties and his/her level of performance; that promotions will be made on the basis of qualifications, merit and ability; that progressively improved work performance over an extended period will be recognized and rewarded and that incompetence will not be tolerated; and that he/she will not be subject to suspension, demotion, salary reduction, or discharge without reason or cause.

RULE 3 - GENERAL PROVISIONS

SECTION 1. FAIR EMPLOYMENT

Questions in any examination, application form, personnel proceeding, or by any appointing authority shall be so framed as to provide for fair and equitable treatment to all. No appointment to or removal from a position in the classified service shall be affected or influenced in any manner by race, color, creed, national origin, sex, marital status, age, sexual orientation, disability, medical condition or by any political or religious opinion or affiliation, unless a bona fide occupational qualification or requirement exists. Affirmative action shall be undertaken to insure these equal employment opportunities. Applicants for employment wishing to file a complaint alleging they were discriminated against for any of the reasons above, must file a specific written complaint with the Personnel Officer within 30 days of such alleged specific discriminatory act.

SECTION 2. AMENDMENT AND REVISION OF RULES

Recommendation for amendment and revision of these Rules shall be made by the City Manager to the City Council. Prior to consideration, any amendment or revision shall be publicly posted and any recognized employee organization shall be given reasonable written notice of any amendment or revision of Rules, together with notice of the time, place, and date of hearing by the City Council. At the time of consideration, any interested person or recognized employee organization may appear and be heard. Amendments and revisions shall become effective upon adoption by the City Council following such hearing.

SECTION 3. VIOLATION OF RULES

Violation of the provisions of these Rules shall be grounds for rejection or disciplinary action.

SECTION 4. EMPLOYEE DRESS CODE

Employees of the City of Costa Mesa are required to dress appropriately for the jobs they are performing. Therefore, the dress regulations contained in this section shall be followed.

- A. All clothing must be neat, clean and in good repair.
- B. Prescribed uniforms and safety equipment must be worn where applicable.
- C. Footwear must be appropriate for the work environment and functions being performed.
- D. Hair must be neat, clean and well-groomed.
- E. Beards, mustaches and sideburns must be maintained in a neat and well-groomed fashion.
- F. Jewelry is acceptable except in areas wherein it constitutes a health or safety hazard.
- G. Good personal hygiene is required.

RULE 4 - DEFINITION OF TERMS

The following terms, whenever used in these Rules, shall be defined as follows:

ADMINISTRATIVE REGULATION

A classification of City policies, rules, and/or procedures as may be issued by the City Manager.

ALLOCATION

The assignment of a single position to its proper class in accordance with the duties performed, and the authority and responsibility exercised, or the assignment of a class to a salary range or salary rate.

APPOINTING AUTHORITY

The officer or officers of the City who have the authority to make the appointment to the position to be filled.

APPOINTMENT

The employment of a person in a position.

A. ACTING APPOINTMENT

The appointment for a limited period of a person to a position in a class for which there is no employment list; to a position in a higher class occupied by a regular appointee on suspension; or to a position in a higher class occupied by a probationary or regular appointee who is on an authorized leave of absence.

B. ORIGINAL APPOINTMENT

A person's first appointment as a City employee.

C. PROBATIONARY APPOINTMENT

The probationary employment of a person in a permanent position. A probationary appointment is for a specified period during which job performance is evaluated as the basis for a subsequent regular appointment.

D. REGULAR APPOINTMENT

The regular employment of a person in a permanent position, following the successful completion of a probation period.

CLASS

A group of positions sufficiently similar in duties, responsibilities, authority and minimum qualifications for employment to permit combining them under a single title and equitable application of common standards of selection and compensation.

CLASSIFICATION PLAN

The designation of a title for each class together with the specification for each class as prepared and maintained by the Personnel Officer.

CLASSIFIED SERVICE

The positions and employments which are included or which may hereafter be included under the personnel system by ordinance or resolution.

CLASS SPECIFICATIONS

A written description of a class setting forth factors and conditions which are essential characteristics of positions in that class.

CONTINUOUS SERVICE

The employment without break or interruption of an employee having a probationary or regular appointment.

DEMOTION

The voluntary or involuntary reduction of a regular employee from a position in one class to a position in another class having a lower maximum salary rate.

DISCHARGE

The involuntary separation of an employee from the City service for disciplinary reasons.

ELIGIBLE

A person whose name is on an employment list.

EMPLOYEE

A person legally occupying a position.

- A. PROBATIONARY EMPLOYEE**
An employee who has a probationary appointment to a permanent position.
- B. REGULAR EMPLOYEE**
An employee who has successfully completed his/her probationary period in a permanent position.
- C. TEMPORARY EMPLOYEE**
An employee in a position of limited duration.

EMPLOYEE ORGANIZATION

Any organization which includes employees of a public agency or which has as one of its primary purposes representing of such employees in relations with the public agency.

EMPLOYMENT LIST(S)

A list(s) of names of persons who have taken and passed an examination for a class in the classified service and are placed in score groups.

EXAMINATION

- A. OPEN-COMPETITIVE EXAMINATION**
An examination for a particular class which is open to all persons meeting the qualifications for that class.
- B. PROMOTIONAL EXAMINATION**
An examination for a particular class, admission to the examination being limited to current employed individuals who meet the minimum qualifications for that class.
- C. CONTINUOUS EXAMINATION**
An open-competitive examination which is administered periodically and as a result of which names are placed on an employment list.

EXEMPT SERVICE

The positions and employments which are not included under the personnel system by ordinance or resolution.

JOB SERIES

A progression of related classifications.

LAYOFF

The termination of a position or positions in the classified service due to reorganization, reassignment, or the lack of work or funds.

LEAVE

Authorized or unauthorized absence from an employee's work station.

LIMITED TERM EMPLOYMENT

An employee hired for the specific purpose or needs related to a project, program or activity with a defined or specified time frame and/or funding element. Such employees will be treated as regular probationary full-time employees. Usually the ending date of employment will be identified.

MERIT SERVICE ADVANCEMENT

The increase of an employee's salary within the salary range established for the class or position he/she occupies based on job performance. Merit service advancement is not an automatic advancement.

OVERTIME

The working by a probationary or regular employee in a full-time position of more hours than are required for a work week for the position.

PERSONNEL ACTION FORM

The multi-purpose form used for processing changes in an employee's salary rate, employment status or other matters contemplated in these Rules.

PERSONNEL ORDINANCE

Ordinance No. 68-40 which creates a personnel system for the City.

POSITION

A combination of current duties and responsibilities assigned to a single employee and performed on either a full-time or part-time basis.

A. PART-TIME POSITION

A position which is normally scheduled to work less than the number of established hours for full-time employment.

A part time position may be either temporary or permanent; but in all cases part-time employees are considered "at-will" employees.

B. PERMANENT POSITION

A full-time or part-time position that is individually authorized in the budget and which is expected to exist indefinitely.

PROBATIONARY PERIOD

A working test period that is part of the selection process and during which an employee is required to demonstrate his/her fitness for the duties of the position to which he/she has been assigned by actual performance of such duties. During this period, an employee is considered an "at-will" employee who may be terminated without cause and right of appeal.

PROBATIONARY STATUS

The status of a person who has a probationary appointment.

PROMOTION

The advancement of an employee from a position in one class to a position in another class in a job series having a higher maximum salary rate.

PROMOTIONAL LIST

An employment list resulting from a promotional examination.

PUBLIC AGENCY

Public agency is the City of Costa Mesa and any other public district under the jurisdiction of the City of Costa Mesa.

REASSIGNMENT

The change of an employee from one position in a classification to another position in the same classification.

RECLASSIFICATION

The reassignment of a position from one class to a different class in accordance with re-evaluation of the minimum qualifications, duties, and responsibilities of the position.

RECOGNIZED EMPLOYEE ORGANIZATION

An employee organization which has been formally acknowledged by the public agency as an employee organization which represents employees of the public agency.

REDUCTION

A salary decrease within the limits of the pay range established for a class.

RE-EMPLOYMENT

The re-employment without examination of a former permanent employee.

REGULAR SALARY

The rate of compensation established on the salary resolution exclusive of overtime and other forms of extra compensation.

REGULAR STATUS

The status of an employee who has acquired a regular appointment.

REINSTATEMENT

An employee reinstated to his/her former position.

REPRIMAND

An oral or written reprimand made as a disciplinary action.

RESIGNATION

The voluntary separation of an employee from the City service.

SALARY RANGE

The range of salary rates for a class.

SALARY RATE

The dollar amount of each step in a salary range or the flat dollar amount of a salary for a class not having a salary range.

SALARY STEP

The minimum through maximum salary increments of a salary range.

SUSPENSION

The temporary separation of an employee from the City Service for disciplinary purposes.

SWORN PERSONNEL

Sworn employment as designated by the City, pursuant to California Government Code Sections 20019, 20019.4, 20020, and 20021.

Employees of the Police and Fire Departments who are actively engaged in the enforcement of the laws of the State of California and the ordinances of the City of Costa Mesa, in protection of lives and property and in prevention and suppression of fires.

TERMINATION

The separation of an employee from the City service because of retirement, resignation, death, discharge, job abandonment, or incapacity to perform the work.

TRANSFER

A change of an employee from one department of the City to another.

VACANCY

An authorized position that is not occupied by an employee having either a probationary or regular appointment to the position.

WORK SCHEDULE

The assignment of a position to a work shift or a series of work shifts during a biweekly pay period.

WORK SHIFT

The number of regular working hours assigned for a particular position or class.

RULE 5 - CLASSIFICATION

SECTION 1. CLASSIFICATION OF POSITIONS

All positions in the City service shall be grouped into classes. Each class shall include those positions sufficiently similar in duties and responsibilities to require similar standards of education, experience, ability and personal traits.

SECTION 2. PREPARATION AND CONTENT OF CLASS SPECIFICATIONS

The Personnel Officer shall be responsible for preparing and maintaining class specifications for all positions. The specifications shall include, but not be limited to, a list of typical duties and a statement of the minimum qualifications required for appointment. It shall be understood that all positions may require the ability to read, write and speak the English language; to follow written and oral instructions; maintain satisfactory relations with co-workers and the public; and maintain a record of orderly law-abiding citizenship, reliability, sobriety, integrity and loyalty.

SECTION 3. INTERPRETATION OF CLASS SPECIFICATIONS

All class specifications shall describe typical duties which employees occupying positions in the class may properly be required to perform. Class specifications are explanatory but not restrictive. The listing of particular tasks shall not preclude the assignment of other tasks of related kind or character, or requiring lesser skills.

SECTION 4. ALLOCATION OF POSITIONS

Following the adoption of the classification plan, the Personnel Officer shall allocate every position in the classified service to one of the classes established by the plan.

SECTION 5. NEW POSITIONS

When a new position is created, before the same may be filled, the appointing authority shall notify the Personnel Officer and, except as otherwise provided by Ordinance or these Rules, no person shall be appointed or employed to fill any such position until the classification plan shall have been amended to provide therefore an appropriate employment list established for such position.

SECTION 6. RECLASSIFICATION

Positions, the duties of which have changed materially so as to necessitate reclassification, shall be allocated by the Personnel Officer to a more appropriate class, whether new or already created, in the same manner as originally classified and allocated. Reclassification shall not be used for the purpose of avoiding restrictions surrounding demotions and promotions.

RULE 6 - COMPENSATION

SECTION 1. PREPARATION OF PLAN

The City Manager shall direct the preparation of a proposed pay plan covering all classes of positions in the classified and exempt service showing the minimum and maximum rates of pay. In arriving at such salary ranges, consideration may be given to prevailing rates of pay for comparable work in other public and in private employment, to current costs of living, to suggestions of department heads, to the City's financial condition and policies and other relevant factors. The City Manager shall direct such further studies of the pay plan as may be requested by the City Council.

SECTION 2. ADOPTION OF PLAN

The City Manager shall submit the proposed pay plan to the City Council. The City Council shall adopt, or amend and adopt the proposed plan. Thereafter, no position shall be assigned a salary higher than the maximum or lower than the minimum salary provided for that class of position, unless the salary schedule for the class is amended in the same manner as herein provided for its adoption.

RULE 7 - APPLICATIONS AND APPLICANTS

SECTION 1. ANNOUNCEMENT

All examinations for classes in the classified service shall be publicized by posting announcements in the City Hall, on bulletin boards, and by such other methods as the Personnel Officer deems advisable. The announcements shall specify the title and pay of the class for which the examination is announced, the nature of the work to be performed, preparation

desirable for the performance of the work of the class, the dates, time, place and manner of making applications, and other pertinent information.

SECTION 2. APPLICATION FORMS

Application forms, provided by the Personnel Officer, shall require information covering training, experience and other pertinent information and may include any other certificates deemed necessary by the Personnel Officer. All applications must be signed by the person applying.

SECTION 3. DISQUALIFICATIONS

The Personnel Officer may reject any application which indicates on its face that the applicant does not possess the minimum qualifications required for the position. Applications may be rejected if the applicant is physically or mentally unfit for the performance of duties of the position to which he/she seeks employment, has made any false statement of any material fact or practiced any deception or fraud in his/her application, or has been convicted of a criminal offense, may reasonably be expected to interfere with or prevent effective performance in the position applied for or interfere or prevent effective performance by the City of its duties and responsibilities.

Applicants who have been convicted of crimes involving basic questions of honesty, integrity, and character may be subject to disqualification if, after an investigation of all relevant factors, it appears that the conviction involved moral turpitude.

Determination of past criminal conduct which may disqualify an applicant shall consider the convictions as reported by the applicant on the application form, the applicant's record with local, state, or other criminal justice agencies, as authorized by Penal Code Section 11105 and other applicable laws. Whenever an application is rejected, notice of such action shall be mailed to the applicant by the Personnel Officer.

RULE 8 - EXAMINATIONS

SECTION 1. NATURE AND TYPES OF EXAMINATIONS

The selection technique used in the examination process shall be impartial, of a relevant nature and shall relate to those subjects which, in the opinion of the Personnel Officer, fairly measure the relative capacity of persons examined to execute the duties and responsibilities of the class to which they seek to be appointed. Examinations may include, but are not necessarily limited to, written tests, interviews, performance tests, evaluations of daily work performance, work samples, medical tests and/or any combination thereof.

SECTION 2. PROMOTIONAL EXAMINATIONS

Promotional examinations may be conducted whenever, in the opinion of the Personnel Officer, the needs of the service are required. Promotional examinations may include any of the selection processes mentioned in Section 1 of this Rule. Only employees who meet the minimum requirements set forth in promotional examination announcements may compete in promotional examinations.

SECTION 3. CONTINUOUS EXAMINATIONS

Open-competitive examinations may be administered periodically for a single class as the needs of the service require. Names shall be placed on employment lists and shall remain on such lists as prescribed in Rule 9.

SECTION 4. CONDUCT OF EXAMINATIONS

The Personnel Officer shall determine the manner and methods and by whom examinations shall be prepared and administered. The Personnel Officer shall arrange for the use of facilities to conduct examinations.

SECTION 5. SCORING EXAMINATIONS AND QUALIFYING SCORES

A candidate's score in the examination process shall be contingent on his/her scores on each part of the examination, weighted as shown in the examination announcement. Failure on one part of the examination may be grounds for declaring such applicants as failing in the entire examination or as disqualified for subsequent parts of an examination. The Personnel Officer may, at his/her discretion, include as part of the examination tests which are qualifying only.

SECTION 6. NOTIFICATION OF EXAMINATION RESULTS

Each candidate in an examination shall be given notice of the results thereof and, if successful, of his/her final earned score grouping.

RULE 9 - EMPLOYMENT LISTS

SECTION 1. EMPLOYMENT LISTS

As soon as possible after the completion of an examination, the Personnel Officer shall prepare an employment list consisting of the names of candidates who qualified in the examination, arranged in alphabetical order.

SECTION 2. DURATION OF EMPLOYMENT LISTS

Employment and reemployment lists and names thereon shall remain in effect for one (1) year, unless sooner exhausted, and may be extended by action of the Personnel Officer for additional periods, but in no event shall an employment list remain in effect for more than two (2) years.

SECTION 3. REEMPLOYMENT LISTS

The names of probationary and permanent employees who have been laid off shall be placed on appropriate reemployment lists in the order of their competency based upon an evaluation of qualifications and performance from highest to lowest. Such names shall remain thereon for a period of one (1) year unless such persons are sooner reemployed.

When a probationary or permanent employee resigns from the City employment while in good standing, such employee may request his/her name be placed the appropriate reemployment list. Such consideration for reemployment shall be available to said employee for a period of one (1) year following resignation in good standing. Reemployment of an employee remains the sole discretion of the City.

SECTION 4. REMOVAL OF NAMES FROM LIST

The names of any person appearing on a reemployment, employment or promotional list shall be removed if the eligible requests in writing that his/her name be removed; if he/she fails to respond to a notice mailed to his/her last known address; if he/she has refused two offers of employment or if he/she failed a department head interview. The person affected shall be notified of the removal of his/her name. The names of persons on promotional lists who terminate from the City shall be dropped from such lists.

RULE 10 - METHOD OF FILLING VACANCIES

SECTION 1. TYPES OF APPOINTMENTS

All vacancies in the classified service shall be filled by reemployment, reinstatement, transfer, demotion or from eligibles certified by the Personnel Officer from an appropriate employment or promotional list, if available. In the absence of persons eligible for appointment in these ways, acting appointments may be made in accordance with the Personnel Ordinance and these Rules.

SECTION 2. NOTICE TO PERSONNEL OFFICER

Whenever a vacancy in the classified service is to be filled, the Personnel Officer shall be notified. The Personnel Officer shall advise as to the availability of all eligible persons. Whenever there are fewer than five (5) names of individuals willing to accept appointment on a promotional list or an open-competitive list, the appointing authority may make an appointment from among such eligibles or may request the Personnel Officer to establish a new list.

SECTION 3. CERTIFICATION OF ELIGIBLE PERSONS

The appointing authority shall indicate whether it is desirable to fill the vacancy by reemployment, reinstatement, transfer, demotion, promotion or from an employment list.

SECTION 4. APPOINTMENT

After an interview and investigation, the appointing authority shall make appointments from among eligible persons and shall immediately notify the Personnel Officer of the person or persons selected. The Personnel Officer shall thereupon notify the person selected and, if the applicant accepts the appointment and presents him/herself for duty within such period of time as the appointing authority shall prescribe, he/she shall be deemed to be appointed, otherwise he/she shall be deemed to decline the appointment.

SECTION 5. ACTING APPOINTMENTS

In the absence of appropriate lists, an acting appointment may be made by the appointing authority. An employment list shall be established within six (6) months for any permanent position filled by an acting appointment. The City Manager may extend the period of any acting appointment for successive thirty (30) day periods with notification to the City Council of such extensions.

No special credit shall be allowed in meeting any qualification or in giving any test or the establishment of any open-competitive or promotional list for service rendered under acting appointment.

SECTION 6. EMERGENCY APPOINTMENTS

To meet the immediate requirements of any emergency condition, such as extraordinary fire, flood, earthquake, riot of public disorder which threatens public life or property, any legally authorized person may employ such persons as may be needed for the duration of the emergency without regard to the Personnel Ordinance or Rules affecting appointments. As soon as possible, such appointments shall be reported to the Personnel Officer.

RULE 11 - PROBATIONARY PERIOD

SECTION 1. OBJECTIVE OF PROBATIONARY PERIOD

The probationary period shall be regarded as an integral part of the examination process and shall be utilized for closely observing the employee's work and for securing the most effective adjustment of the new employee to his/her position and for rejecting a probationary employee whose performance does not meet the required standards of work. During the period an employee is an "at-will employee" and may be terminated without cause and right of appeal.

SECTION 2. REGULAR APPOINTMENT FOLLOWING PROBATIONARY PERIOD

All original and promotional appointments shall be tentative and subject to a probationary period of one (1) year of continuous service for original appointments and six (6) months of continuous service for promotional appointments except for sworn Police and Fire employees, which shall be one (1) year in all cases. During the probationary period, the employee may be rejected at any time without the right of appeal or hearing. All employees must complete the initial probation period in order to obtain permanent employment status.

The Personnel Office shall notify the appointing authority prior to the ending of any probationary period.

Prior to the end of the probationary period, the appointing authority shall file with the Personnel Officer a statement in writing indicating that the retention or rejection of such employee is desired.

SECTION 3. REJECTION FOLLOWING PROMOTION

Any employee rejected during the probationary period following a promotional appointment or at the conclusion of the probationary period shall be reinstated to the position from which he/she was promoted, unless charges are filed and he/she is discharged in the manner provided for in these Rules.

SECTION 4. EXTENSION OF PROBATION

The Personnel Officer has the authority to extend a probationary period once for up to six (6) months per position. Notification of the extension must be provided to the employee prior to the end of the probationary period.

RULE 12 - ATTENDANCE AND LEAVES

SECTION 1. LEAVES OF ABSENCE

For the purpose of computing entitlement to leaves of absence, an employee's continuous service shall be based on the effective date of initial probationary employment in the City service. Such date shall be the employee's anniversary date for vacation and sick leave purposes subject to the provisions contained herein.

SECTION 2. VACATIONS

- A. The purpose of annual vacation leave is to enable each eligible employee annually to return to his/her work mentally refreshed.
- B. Regular full-time employees in the classified service with an average work-week of forty (40) hours shall receive annual vacations with pay in accordance with the following provisions:
 - 1. After continuous full-time service amounting to one (1) year or more, such employee shall have accrued paid vacation at the rate of ninety-two (92) working hours per year.
 - 2. Upon completion of three (3) years of continuous full-time service, but less than five (5) years of continuous full-time service, such employee shall accrue one hundred sixteen (116) working hours per year.
 - 3. Upon completion of five (5) years of continuous full-time service, but less than ten (10) years of continuous full-time service, such employee shall accrue one hundred forty (140) working hours per year.
 - 4. Upon completion of ten (10) years of continuous full-time service, but less than fifteen (15) years of continuous full-time service, such employee shall accrue one hundred sixty-four (164) working hours per year.

5. Upon completion of fifteen (15) years of continuous full-time service such employee shall accrue one hundred eighty-eight (188) working hours per year.

C. Regular full-time employees in the classified service with an average work-week of fifty-six (56) hours shall receive an annual vacation with pay in accordance with following provisions:

1. For one (1) year or more of continuous full-time service, such employee shall have accrued one hundred twenty-eight point eight (128.8) working hours per year.

2. Upon completion of three (3) years of but less than five (5) years of continuous full-time service, such employee shall accrue one hundred sixty two point four (162.4) working hours per year.

3. Upon completion of five (5) years, but less than ten (10) years of continuous full-time service, such employee shall accrue one hundred ninety-six (196) working hours per year.

4. Upon completion of ten (10) years, but less than fifteen (15) years of continuous full-time service, such employee shall accrue two hundred twenty-nine point six (229.6) working hours per year.

5. Upon completion of fifteen (15) years of continuous full-time service, such employee shall accrue two hundred sixty-three point two (263.2) working hours per year.

The hours set forth herein are intended to provide equal proportion of vacation for hours worked for all City employees.

D. ACCUMULATION OF VACATION LEAVE

Accumulation of vacation leave in excess of that earned in a calendar year is allowable upon approval of the department head as authorized by the City Manager by means of an Administrative Regulation.

E. VACATION LEAVE

1. Vacation leave taken shall not be in excess of that actually earned at the time it is taken. Regular and probationary non-safety employees may be granted vacation leave as accrued from date of hire after six (6) months of continuous full-time employment and safety employees after one (1) year of continuous full-time employment.

2. Annual vacation leave shall normally be taken at one time. However, the department head, upon approval of the City Manager, may permit a modification of this requirement.

3. The time during the calendar year at which an employee shall take his/her vacation shall be determined by the department head with particular regard for the need of the service and due regard for the wishes of the employee.

4. In the event one or more municipal holidays fall within a vacation leave, vacation may be extended accordingly for those employees eligible for such holiday.
5. Any leave of absence with out pay shall not accrue vacation leave for each full pay period of such absence.
6. Pay in lieu of vacation will not be granted, except on termination. However, the City Manager may authorize pay in lieu of vacation under extenuating circumstances.

F. TERMINAL VACATION PAY

Upon termination, a permanent employee will receive compensation at his/her current rate for all unused earned vacation up to and including the date of termination.

SECTION 3. SICK LEAVE

A. ELIGIBILITY

Employees having a regular or probationary appointment shall accrue sick leave credit at the rate of twenty percent (20%) of the standard average work-week for each full month of continuous service if the employee has worked or has been on authorized leave of absence with pay. Any leave of absence without pay shall not accrue sick leave for each full pay period of such absence.

B. ACCUMULATION OF SICK LEAVE

Sick leave may be accumulated to a maximum of sixty (60) times the monthly accumulation into the primary sick leave bank. The secondary sick leave bank has no maximum accrual. If the primary sick leave bank credit accumulation is at the maximum, the biweekly amount of sick leave accumulation credit the employee earns during that pay period will be calculated and the employee will be granted pay or additional vacation accumulation in an amount equal to one-half (1/2) of this differential credit or have this amount credited to the POST Retirement Medical Plan. The remaining one-half (1/2) accumulation shall be credited to the secondary sick leave bank.

C. LIMITATION OF USE

1. Eligibility for Use of Sick Leave

- a. Sick leave granted shall not be in excess of that actually earned at the time it is taken. Employees shall be eligible to be granted sick leave in the amount earned from date of hire.

- b. Sick leave shall be used in case of a bona fide illness of the employee upon approval. Sick leave may also be used for serious illness or emergency of a member of the employee's immediate household, who is incapacitated and/or requires the service of a physician, and when the presence of the employee is required. At the conclusion of the emergency, said employee shall return to work as soon as possible. The employee taking such sick leave shall notify their immediate supervisor prior to or within one-half (1/2) hour after the time set for the beginning of his/her daily duties, or as otherwise specified by the department. When absence is for more than three (3) work shifts or, as in the case of employees on a twenty-four (24) hour shift basis, one and one-half (1-1/2) work shifts, the employee may be required to present a physician's certificate to the department head stating the cause of the absence. A physician's certificate indicating fitness to return to duty may be required by the department head. The department head shall forward the certificate to the Personnel Officer for filing.
- c. The City Manager, upon written request, may grant accrued sick leave for employee's family outside the immediate household.
- d. Accrued vacation leave and/or compensatory time off normally will may be used for sickness when all of an employee's accumulated sick leave has been taken. This accrued time may also be utilized to supplement Long Term Disability insurance, provided the supplemental does not exceed 100 percent of the employee's regular rate of pay.
- e. Hours in the secondary sick leave bank may be used only in the event of a verified non-industrial disability which has resulted in an absence of sixty (60) consecutive calendar days.

2. Sick Leave During Vacation

- a. An employee who becomes hospitalized or seriously ill or injured while on vacation may have such period charged to his/her accumulated sick leave instead of to the vacation provided:
 - 1) Immediately upon return to duty, the employee submits to his/her department head a written request for sick leave and a written statement signed by his/her physician describing the nature and dates of his/her serious illness or injury.
 - 2) The department head recommends and the City Manager approves the granting of such sick leave.

3. Other Limitations

- a. No employee shall be entitled to accrue or to take sick leave with pay while absent from duty for any of the following reasons:
 - 1) Disability or illness arising from compensated employment other than with the City of Costa Mesa.
 - 2) Leave of absence without pay.
 - 3) Absence because of intoxication or for the purpose of recovering from intoxication or intentional self-inflicted injury or illness, unless otherwise approved by the City.

D. PENALTY FOR SICK LEAVE ABUSE

When, in the judgment of the department head, the employee's reasons for being absent are inadequate, he/she shall change the payroll time report to indicate that the absence was leave without pay. In addition, the employee is subject to disciplinary action.

E. SICK LEAVE PAY AT SEPARATION

Employees who retire or leave the City service with at least 20 years of continued service shall be paid one-half (1/2) the accrued sick leave in their primary sick leave bank. As an option, instead of receiving this payoff, employees can choose to receive service credit towards retirement for the full accrued value for both primary and secondary sick leave banks.

An employee who subsequently re-enters the City service is not entitled to any previously accrued sick leave.

F. EXTENDED SICK LEAVE

On written request of the employee and recommendation by the department head, the City Manager may authorize a leave of absence without pay for the purpose of recovering from an illness, provided:

- a. The employee has used up all of his/her accumulated sick leave, but may retain compensatory time and vacation time.
- b. The employee presents to his/her department head an estimate of the time needed to recover signed by a physician approved by the City.
- c. Prior to assuming his/her duties, the employee may be required to take a medical examination at his/her expense. The employment record and the result of such examination shall be considered in determining the employee's fitness to return to work.

SECTION 4. LEAVES OF ABSENCE WITHOUT PAY

A. SPECIAL LEAVES OF ABSENCE WITHOUT PAY

The department head may authorize special leaves of absence without pay for a period of up to two (2) weeks (14 consecutive days).

B. NINETY (90) CALENDAR DAYS OR LESS

Upon the written recommendation of the department head, the City Manager may authorize special leaves of absence without pay for a period or periods not to exceed ninety (90) calendar days for purposes deemed by the City Manager to be beneficial to the City.

C. IN EXCESS OF NINETY (90) CALENDAR DAYS

The City Council may, upon the recommendation of the City Manager, grant leaves of absence with or without pay in excess of ninety (90) calendar days for purposes deemed by the City Manager to be beneficial to the City.

D. CONTINUATION OF BENEFITS

The employee shall be responsible for the continuation of employee benefits when a leave of absence exceeds one (1) full pay period.

SECTION 5. MILITARY LEAVES

An employee having a probationary or regular appointment shall be entitled to such benefits as are provided in the California Military and Veterans Code. An employee requesting such military leave shall present a copy of his/her military orders to his/her department head prior to the beginning of the leave.

Employees are entitled to a temporary military leave of absence not to exceed 180 calendar days per year. Employees having more than one year continuous service and granted a military leave of absence are entitled to receive the equivalent salary up to the first 30 calendar days of any one military leave, or during any one (1) calendar year. Weekend drills are excluded from the meaning of ordered military leave.

SECTION 6. REPORTING ABSENCES

An employee who is absent from duty shall report the reason for such absence to his/her department head or immediate supervisor prior to the time of expected absence whenever possible, and in no case later than one-half (1/2) hour after the beginning of his/her normal work shift. Absences not reported in such manner may be subject to disciplinary action.

SECTION 7. BEREAVEMENT LEAVE

Whenever an employee who is eligible to receive sick leave is compelled to be absent from duty by reason of a death or critical illness where death appears imminent of father, mother, brother, sister, wife, husband, or child of employee or spouse, such employee shall, upon approval of his/her department head, be entitled to charge such absence to his/her accumulated sick leave to a maximum of five (5) working days in a calendar year. Such maximum for Fire Department personnel on twenty-four (24) hour shifts shall be two and one-half (2-1/2) work shifts. The City Manager, upon written request, may grant bereavement leave for persons other than heretofore listed.

SECTION 8. HOURS OF WORK

A. WORKWEEK

Except as where otherwise provided below, the average workweek for all full-time positions, except those in the Fire Department having twenty-four (24) hour work shifts, shall be forty (40) hours and shall begin on each Sunday and end with the following Saturday. The average workweek for Fire Department positions having twenty-four (24) hour work shifts shall be fifty-six (56) hours.

B. WORK SHIFTS

The work shift for employees in specific departments, divisions or sections may be established on a pay period basis, beginning on a Sunday and ending with the second Saturday thereafter. Such employees who occupy full-time positions shall be scheduled to work eighty (80) hours in each work shift. Such work periods shall not be implemented without the City and the appropriate employee association first meeting and conferring on such hours of work for each section, division and/or department proposing implementation of such work shifts. For Fire Department positions, except those designated by the Fire Chief and approved by the City Manager, the work shift shall be twenty-four (24) hours.

C. WORK SCHEDULE

Work schedules for the average workweek shall usually be one of the following: five eight (8) hour days on and two days off, or four ten (10) hour days on and three days off. Work schedules for work shifts established on a pay period basis shall usually be ten (10) eight hour days on and four days off, four nine (9) hour days and one four (4) hour day on and two days off each week, or four nine (9) hour days on each week and one additional eight (8) hour day on alternate weeks. All employees shall be scheduled at least two consecutive calendar days off. The work schedule for each position shall be established by the department head and approved by the City Manager.

D. EXCHANGE OF WORK SHIFTS

Exchange of work shifts may be granted by the department head for emergency or other justifiable reasons. Such exchange of work shifts shall be reported to the payroll division of the Finance Department in the form and on the dates specified.

SECTION 9. ATTENDANCE

Employees shall be in attendance at their work in accordance with Rules regarding hours of work, holidays and leaves. All departments shall keep daily attendance records. Any unauthorized tardiness or absence is cause for disciplinary action.

SECTION 10. HOLIDAY LEAVE

The City provides a total of eleven (11) eight-hour paid holidays per year which includes sixteen (16) floating holiday hours. The following nine (9) dates and such other days or portion of days as may be designated by the City Council shall be observed as paid holidays: January 1, New Year's Day; third Monday in February, Washington's Birthday; last Monday in May, Memorial Day observance; July 4, Independence Day; first Monday in September, Labor Day; November 11, Veteran's Day observance; fourth Thursday in November, Thanksgiving; the Friday immediately following Thanksgiving; and December 25, Christmas Day. In the event any of the above holidays fall on Saturday, the preceding Friday will be observed. In the event any of the above holidays fall on Sunday, the following Monday will be observed.

The above-listed paid holidays shall apply to all permanent full-time employees who shall normally have time off for the holiday at full pay. Certain employees designated by their department head and approved by the City Manager may be assigned to work their regular scheduled shifts regardless of legal holidays. Employees so assigned shall be paid or earn additional vacation, as specified by the department head, at the equivalent of 1/10 of their regular biweekly compensation for each full day (except Saturdays and Sundays) that the general City offices are closed in observance of legal holidays.

SECTION 11. JURY DUTY

Any employee in the classified service who is duly summoned into any court for the purpose of performing jury service, or serving as a City witness, shall receive their regular compensation for any regularly scheduled working hours spent in the actual performance of such service.

Employees receiving witness fees or jury service fees, shall remit such fees to the Finance Director in order to be considered at work for payroll purposes during the time spent as such witness or serving on the jury. The employee is entitled to retain any mileage allowance if paid by the court.

SECTION 12. INDUSTRIAL ACCIDENT LEAVE

- A. In the event that any regular or probationary full-time employee in the classified service is absent from work as a result of any injury or disease arising out of and during the course of employment with the City of Costa Mesa comes under the State of California Worker's Compensation Insurance and Safety Act, such absence shall be considered to be industrial accident leave as specified below and nothing herein contained shall be deemed to affect the employee's entitlement to medical, surgical and hospital treatment as provided in Division 4 of the California Labor Code nor be deemed to affect the employee's entitlement to receive such temporary disability payments as also provided in Division 4. These rules apply to industrial leave only.

1. Eligibility

- a. If the illness or injury resulted from the failure to wear prescribed safety or personal protective clothing or equipment; use provided safeguards or safety equipment; follow safety rules and regulations, or other departmental work rules; or the employee's gross negligence or willful misconduct was the proximate cause of the absence; there may be grounds for disciplinary action.
- b. The employee is unable to perform his/her assigned duties due to job-related injury or illness and is entitled to Worker's Compensation Temporary Disability under the provisions of Division 4 of the California Labor Code.
- c. The employee reports all on-the-job or off-the-job injury or illness which may impair his/her ability to perform regularly assigned duties to his/her supervisor within 24 hours (or the next regularly scheduled workday, whichever is sooner) of the incident, except under extenuating circumstances. Extenuating circumstances under which an employee may report an injury beyond the above limits shall include but not be limited to a report at the time the employee realizes the injury is disabling and the medical evidence is consistent with the claim. Failure to report said injury or accident shall be grounds for disciplinary action. After review by the Department, said report shall then be forwarded to the Personnel Office.
- d. Medical treatment is provided and maintained by a licensed physician, chiropractor

or a licensed medical practitioner as prescribed by a licensed physician, acceptable to the City's Workers' Compensation Administration. If the employee has notified the Personnel Office in writing prior to a job injury/illness, the employee's own physician may be used if said physician can attest that they previously directed treatment for them and has their medical records including their medical history. After thirty days, an employee has the right to select his/her own physician provided the employee notifies the Workers' Compensation Administrator in writing of the doctor's name and address prior to the first appointment. The employee must be disabled from and unable to perform any work regularly performed by a City employee which the City makes available with priority being in the employee's department and light duty availability. Any such employee who is going to be absent from work over one week shall contact his designated departmental safety representative each Thursday or any other time designated by the departmental safety representative and report his/her medical progress and approximate date of return to work and any other information the designated departmental safety representative deems appropriate. Employees on industrial leave must report any change in his/her normal place of residence or the address reported where he/she will be during normal business hours while recovering from job-related injuries or illness. Before leaving that location for a period in excess of one (1) day, he/she shall notify the departmental safety representative, and must be available for appointments or consultation as may be required by the City or Workers' Compensation Administrator. The departmental safety representative shall issue weekly reports to the department head with copies to the Personnel Office advising of the employee's status.

- e. The employee must make available after each medical appointment a medical diagnosis and prognosis for regular and/or light duty with all applicable work restrictions since industrial leave cannot be granted if light duty is available and can be performed.
- f. If further remedial action is indicated, the employee must follow a course of treatment which will enable return to full employment at the earliest possible time. This does not mean that the employee should be carried on industrial leave until completely able to perform every duty of the position.
- g. It is the intent that industrial leave will not be approved when competent medical authority as outlined in 1.d of this section determines the disability to be a result of a pre-employment or non-industrial medical condition, a medical condition for which the employee has received a Compromise and Release Settlement pursuant to Division 4 of the Labor Code, or an injury or illness previously denied industrial leave.

2. Industrial Leave will terminate when one of the following occurs:

- a. The employee fails to follow the advice of the treating physician and fails to pursue a course of treatment which will lead to recovery in as short a period of time as possible.
- b. The employee's condition becomes medically permanent and stationary.
- c. It is medically determined that the employee will never be capable of performing the duties of his or her classification.
- d. The employee no longer qualifies for industrial leave.
- e. The employee is engaged in outside employment or activity which would medically impede recovery and prolong his/her return to work as determined by competent medical authority.

- B. In all cases as specified in Item A above where sickness or injury is incurred as a result of employment and is compensable under the Labor Code and/or the Worker's Compensation Insurance and Safety Act of the State of California, the employee's full regular salary for the waiting period required under such laws, following such incapacity, and up to the time that compensation payments commence thereunder, shall be paid by the City.
- C. All regular or probationary full-time employees, except sworn Police and Fire personnel, covered by the provisions for the California Labor Code shall be entitled to Industrial Accident Leave and compensation on the following basis:

When any or probationary full-time employee of the City receives disability payment under the State of California Labor Code or the Workers' Compensation Insurance and Safety Act, such employee shall receive the equivalent of the difference between the disability payment under such Code or laws and his/her full regular salary for a period not to exceed (up to) sixty-six work days (528 hours) of leave for each separate injury. An injury shall be deemed to continue through a recurrence or aggravation to the original injury. Claimed recurrences or aggravations of any injury approved for industrial leave shall be charged to the balance, if any, of the maximum allowance of such leave for the original injury.

POLICE AND FIRE

- D. When a sworn member of the Police or Fire Department of the City receives a disability payment under the Labor Code or the Workers' Compensation Insurance and Safety Act of the State of California, such employee shall receive the difference between the disability payment under such Code or laws and his/her full regular salary for a period not to exceed (up to) nine months (1,560 hours), or for a period not to exceed (up to) one year (2,080 hours) if approved by the City Council upon review at the expiration of said previously described nine-month period. Such nine-month period shall be available for each separate injury. An injury shall be deemed to continue through any recurrence or aggravation to the original injury. Claimed recurrences or aggravations as determined by competent medical authority as outlined in Section 1.d, of any injury approved for industrial leave shall be charged to the balance, if any, of the maximum allowance of such leave for the original injury. In the event of a disagreement over whether a job-related injury/illness is a recurrence, aggravation or a new injury, a final determination shall be made by a competent medical authority mutually accepted by the City's Workers' Compensation Administrator and the employee.
- E. Any employee so entitled shall continue to accrue vacation, holiday and sick leave credits, and to earn eligibility for consideration for merit salary increases during and absence relating from an on-the-job injury. An employee shall not receive payment in excess of full salary through a combination of Workers' Compensation temporary disability payments and paid sick leave or vacation leave or compensatory time off.

RULE 13 - ADDITIONAL PAY AND PAY ADJUSTMENT

SECTION 1. OVERTIME

If an employee is required to work longer than the normal work week or work shift, said employee shall be compensated for said approved overtime either (1) by being allowed off a like amount of working hours, except that sworn Police classifications shall be allowed one and one-half (1-1/2) times the amount of working hours, without deduction from the employee's salary or compensation, or (2) by payment for such overtime at one and one-half (1/1/2) times the employee's regular salary rate. The determination of which method of compensation is used is to be at the discretion of the department head and with the approval of the City Manager. Compensation for said overtime shall normally be included with compensation for the pay period in which such overtime occurs. An employee may, with the department head's approval, accumulate compensatory time to be taken during subsequent pay periods, with departmental approval, to a maximum accumulation of eighty (80) hours for eligible sworn Police and forty (40) hours for all other eligible employees.

These time and one-half provisions do not apply to voluntary overtime, standby time, or other such times when an employee would normally work more than one work shift in twenty-four (24) hours because of shift changes, relief shift scheduling and such like. Only employees in classifications in the Basic Pay Schedule will be eligible for compensated

overtime as stated above.

SECTION 2. STANDBY PAY

If an employee is assigned to duty on a standby basis, he/she shall be paid at the rate of thirteen (13) hours at his/her regular rate of compensation for each week so assigned, plus compensation for each hour worked during such standby assignment. If a holiday falls within the assigned standby week, an additional four (4) hours pay at his/her regular rate of compensation will be given to the person assigned to standby.

SECTION 3. APPLICATION OF PAY RATE

Employees occupying a position in the classified service shall be compensated within the range established for the position's class under the pay plan as provided in Rule 6. The minimum rate for the class generally shall apply to employees upon original appointment. Employees who are reemployed shall receive a rate within the range established for the class and agreed upon by the appointing authority and the employee concerned prior to appointment.

SECTION 4. MERIT SALARY ADVANCEMENT

No salary advancement within a classification shall be made so as to exceed the maximum rate established in the pay plan. Advancement shall not be automatic but shall depend upon increased service value to the City as recommended by his/her supervisor based upon performance record, special training undertaken, length of service and other pertinent factors.

SECTION 5. LONGEVITY PAY ALLOWANCES

The Longevity Program is a monetary award system which provides for certain eligible and qualified employees of the City of Costa Mesa, compensation in addition to their established salaries equal to the sums specified within this Program as appropriate for the levels of longevity in service --but further provides that such additional compensation shall be granted to any individual employee only upon recommendation of the department head and approval by the City Manager.

Such approval to be granted only if evaluation of the employee's job performance indicates meritorious service to the City of Costa Mesa.

AWARD CATEGORIES

YEARS OF SERVICE	AMOUNT OF AWARD
5 - 9	\$ 49
10 - 14	76
15 - 19	103
20 - 24	130
25 - 29	157
30 or more	184

The amount of the monthly award will be adjusted bi-annually to reflect the cost of living. The last adjustment occurred July, 1993.

ELIGIBILITY

Full-time employees employed in classifications placed under the Basic and Executive Pay Schedule of the City of Costa Mesa, except employees in the classifications of Police Officer, Senior Police Officer, Police Sergeant, Police Lieutenant, Police Helicopter Pilot, and Helicopter Sergeant, are eligible to participate in this Longevity Program. Participation is optional, however, and it is the responsibility of individual employees to make application for benefits for which they may be qualified under the Program, in accordance with the provisions indicated below.

APPLICATIONS

Awards under this Program are automatic under meritorious circumstances. Once individual employees have qualified for and been granted a monthly award under this Program, they will not be required to file further applications to continue this award, unless their award has been discontinued for failure to maintain satisfactory meritorious service.

Reinstatement of an award requires an application which must be filed with the department head. Upon the department head's approval, the department head shall forward the application and substantiating evidence to the City Manager for final approval of the award.

PAYMENT

The amount of any Longevity allowance granted an individual employee for a given benefit shall be added to the established salary and paid through the regular biweekly payroll checks effective the beginning of the pay period which corresponds with the employee's hire date. Any approved adjustment in the dollar value of any such award shall be effective only on the first day of a pay period. Any employee receiving an award prior to July 1, 1991, which exceeds the limits outlined above shall be "grandfathered" at that level until such time as he/she qualifies for a higher award.

QUALIFICATION REQUIREMENTS: DEFINITIONS

Longevity - Length of service, for purposes of this program, shall be the number of full years of service completed. Full years of service shall be based on continuous full-time employment with the City of Costa Mesa after deduction has been made for any periods of leave of absence without pay amounting to thirty days or more, and after deductions for any periods of suspension from duty without pay for disciplinary reasons.

RULE 14 - TRANSFER, PROMOTION, DEMOTION, REINSTATEMENT, LAYOFF, RESIGNATION & JOB ABANDONMENT

SECTION 1. TRANSFER

After notice to the Personnel Officer, an employee may be transferred by the appointing authority at any time from one position to another in the same or comparable class. If the transfer involves a change from one department to another, both department heads must consent thereto unless the City Manager orders the transfer for purposes of economy or efficiency. A transfer from one department to another may be initiated at the request of the employee to the Personnel Officer.

A transfer shall not be used to effectuate a promotion, demotion, advancement or reduction, each of which may be accomplished only as provided in the Personnel Ordinance and in these Rules. No person shall be transferred to a position for which he/she does not possess the minimum qualifications.

SECTION 2. PROMOTION

Insofar as practicable and consistent with the best interest of the service, vacancies in the classified service may be filled by promotion from within the classified service after a promotional examination has been given and a promotional list established.

If a vacancy in a position could be better filled by an open-competitive examination, such a list shall be prepared and certified.

SECTION 3. DEMOTION

The appointing authority may demote an employee whose ability to perform his/her required duties falls below standard or for disciplinary purposes. (*See Rule 26, "Disciplinary Procedures."*) No employee shall be demoted to a position for which he/she does not possess the minimum qualifications.

VOLUNTARY DEMOTION

- A. An employee may request a voluntary demotion for any reason. Such a voluntary demotion shall require the approval of the department head for whom the employee will serve and the City Manager. An employee taking a voluntary demotion may be placed in any step in the range of the new classification that does not provide an increase in salary. Said employee shall be given a new anniversary date for the purpose of merit evaluation. An employee cannot ask for a voluntary demotion into a position for which he/she does not possess the minimum qualifications.

SECTION 4. REINSTATEMENT

An employee who has been suspended, demoted, had a salary reduction or discharge, and such action is modified as a result of successful appeal through the grievance procedure, shall be entitled to the pay and benefits as contained in the modification order.

SECTION 5. LAYOFF

Because of material change in duties or organization, or shortage of work or funds, employees in the classified service may be laid off. Thirty (30) calendar days before the effective date of layoff, the appointing authority shall notify the Personnel Officer of the intended action with reasons therefore. Said employee shall be considered for re-employment as provided by these Rules.

SECTION 6. RESIGNATION

An employee wishing to leave the classified service in good standing shall give reasonable notice to the appointing authority (normally two weeks), before the effective date of the last day worked. The resignation shall be forwarded to the Personnel Officer.

SECTION 7. JOB ABANDONMENT

An employee is deemed to have resigned if the employee is absent for five (5) consecutive work days without prior authorization and without notification during that period of the reason for absence. On the third working day of unauthorized absence, the supervisor shall send a telegram or overnight letter to the employee's last known address informing the employee that if the employee fails to report to work within two (2) work days, or receive authorization for such absence, the employee will be deemed to have resigned. Employees separated from employment for job abandonment will be reinstated with such charge removed from the employee's record upon presentation of justification for absence such as severe accident, severe illness, or false arrest. A termination due to job abandonment will be effected after the employee is extended Skelly due process rights.

RULE 15 - OUTSIDE EMPLOYMENT

An employee in the classified service may not engage in employment, other than his/her job with the City of Costa Mesa, except with the approval of his/her department head and only if such employment does not interfere with the performance of assigned duties, does not constitute a conflict of interest, and does not expose employee to significant likelihood of injury or sickness.

An employee injured on his/her outside employment may not use his/her accrued sick leave credit and such employee must be covered by such outside employer's workers' compensation insurance, and employees working as self-employed individuals must agree to hold harmless and indemnify the City.

RULE 16 - PHYSICAL EXAMINATIONS

- A.** In order to be eligible for employment or re-employment with the City of Costa Mesa, candidates may be required to pass a physical examination, which meets the job requirements.
- B.** In order to be eligible for promotion or transfer to a job class in a category requiring greater physical qualifications than his/her present job class, any employee must pass the appropriate physical examination required for such promotion or transfer.
- C.** Any employee may be required to undergo a physical examination at any time designated by the appointing authority and with the approval of the City Manager.
- D.** All physical examinations required under the provisions of this Rule shall be performed by a licensed physician specified by the City of Costa Mesa.

RULE 17 - TRAINING OF EMPLOYEES

SECTION 1. RESPONSIBILITY FOR TRAINING

The City Council encourages the improvement of service of employees by providing opportunity for training, including training for advancement and for general fitness for public service. Responsibility for developing programs of training for employees shall be assumed jointly by the Personnel Officer and department heads. Such training programs may include lecture courses, demonstrations, assignment of reading matter or such other devices as may be available for the purpose of improving the effectiveness and broadening the knowledge of municipal officers and employees in the performance of their respective duties.

Compulsory training may from time to time be required as a condition for continued employment with the City of Costa Mesa.

SECTION 2. CREDIT FOR TRAINING

Participation in and successful completion of special training courses may be considered in making advancements and promotions. Evidence of such activities shall be filed by the employee with the Personnel Officer.

SECTION 3. PAYMENT FOR TRAINING

Tuition and/or textbook costs involved in educational courses which may be taken by an employee and which pertain to his/her City employment, may be reimbursed to said employee by the City if reimbursement is recommended by the employee's department head and approved by the City Manager. The employee participating must maintain a passing grade of "C" or better and should see that the Personnel Department receives a copy of the employee's grades.

RULE 18 - SERVICE AWARDS

Service awards shall be presented to employees in the classified service for five (5) years of service and at each five (5) year interval thereafter.

For purposes of this Rule, the term "years of service" as applied to employees in the classified service shall be defined as the accumulated total of all periods of full-time service, excepting therefrom any periods of leave of absence at no pay exceeding thirty (30) calendar days.

The provisions of this Rule shall apply also to the City Manager, City Attorney, City Clerk, City Treasurer, members of the City Council and duly appointed members of the Planning Commission.

RULE 19 - REPORTS AND RECORDS

SECTION 1. ROSTER CARD PERSONNEL FILES

The Personnel Officer shall maintain a service or roster card personnel file for each employee in the service of the City showing the name, title of position held, department to which assigned, salary, changes in employment status and such other information as may be considered pertinent.

SECTION 2. CHANGE OF STATUS REPORT

Every appointment, transfer, promotion, demotion, change of salary rate and other temporary or permanent changes in status of employees shall be reported to the Personnel Officer in such manner as he/she may prescribe.

RULE 20 - NEPOTISM

Any relative, whether a relative by blood or marriage of a Council or the City Manager, shall not be appointed to any position, whether full-time or part-time, within the City service. Relatives may be allowed to work within the same department as determined by the department head providing one does not supervise the other.

It is not the intention of this Rule to terminate an employee of the City of Costa Mesa whose relative, whether by blood or marriage, becomes a City Council member, the City Manager, or a department head.

No person shall be appointed or promoted to a permanently assigned position in any department in which such person's relative already holds a position when such employment would result in any of the following:

- A. A supervisor-subordinate relationship;
- B. The employee having job duties which require performance of shared duties on the same or related work assignment;
- C. Both employees having the same immediate supervisor.

For purposes of this section, "relative" means spouse, child, step-child, parent, grandparent, grandchild, brother, sister, half-brother, half-sister, aunt, uncle, niece, nephew, parent-in-law, brother-in-law, sister-in-law or any other individual related by blood or marriage.

If a City of Costa Mesa employee marries another person employed by the City of Costa Mesa within the same department, both employees shall be allowed to retain their respective positions provided that a supervisory relationship does not exist at the time of marriage between these two positions. During the period of employment, no supervisory position shall exist between the two employees. For the purpose of this section, a supervisory relationship shall be defined as one in which one person exercises the right to control, direct, reward or punish another person by virtue of the duties and responsibilities assigned to his or her position.

The City of Costa Mesa also retains the right to refuse to place both spouses in the same department, division or facility where such has the potential for creating adverse impact on supervision, safety, security, or morale or involves potential conflicts of interest.

RULE 21 - EMPLOYEE REPRESENTATION

SECTION 1. PURPOSES

The purposes of this Rule are:

- A. To fulfill the provisions of Sections 3500 et seq. of the government Code of the State of California, known as the "Meyer-Millias Brown Act"; and
- B. To provide for procedures for designation of employee groups or units of representation; and
- C. To provide for procedures for recognition of the employee organization representing the unit by the City; and
- D. To establish a reasonable and orderly method for the meet and confer process; and
- E. To adopt certain privileges by the City for its employee organizations.

SECTION 2. UNIT DETERMINATION

The City Manager shall determine appropriate units of representation. The principal criterion in making this decision is whether there is a community of interest among employees. The following factors, among others to be considered in making such determinations, are:

- A. Which unit will assure employees the fullest freedom in their exercise of rights set forth under this article;
- B. The relationship of employees in the proposed unit as among themselves, in relation to other employees employed by the City and in similar public employment elsewhere;
- C. The effect of the proposed unit on the efficient operation of the City and employer-employee relations;
- D. The extent to which employees have common job skill, duties and requirements.

No unit shall be deemed appropriate solely on the basis of the extent to which employees in the unit have organized. No single class of employees shall be divided into more than one unit.

If a dispute arises regarding a unit of recognition, an employee organization may file an appeal through the City Manager with City Council. Upon receipt of said appeal, the Council may hold a public hearing to consider the appeal. Its findings shall be final and conclusive.

SECTION 3. RECOGNITION OF EMPLOYEE ORGANIZATION

The City Manager may grant or recertify recognition of one employee organization only in January of each year that a Memorandum of Understanding must be renewed or renegotiated for each unit that:

- A. Complies with the application requirements stated below; and
- B. Demonstrates that more than fifty percent (50%) of the permanent employees of those employed in classifications within the unit are members of such organization.

An employee organization which desires to be formally acknowledged and established as a Recognized Employee Organization shall submit a written request therefore, containing the following information:

- A. A written request for recognition.
- B. A copy of organization's constitution, charter and bylaws.
- C. Name and address of the employee organization and its officers.
- D. Whether the employee organization is a chapter or local of, or affiliated directly or indirectly in any manner with, a regional or state, or a national or international organization. If so, the name and address of each such organization.
- E. Names of the representatives not to exceed three (3) authorized to speak on behalf of the organization.
- F. Names and addresses of those persons, not to exceed two (2), to whom notices sent by regular United States mail will be determined sufficient notice to the employee organization for any purpose.
- G. Membership affidavits, on forms provided by the City, containing the signatures of members and other information deemed necessary by the City Manager.
- H. A statement that one of the prime purposes of the employee organization is to represent employees in their employment relations with the City.
- I. A statement that the employee organization has no restrictions on membership based on race, color, creed, sex, national origin, age, sexual orientation or disability.
- J. A statement that the employee organization recognizes that the provisions of Section 923 of the Labor Code are not applicable to City employees.

No more than one employee organization shall be recognized for any one class in any one year. An application by a Recognized Employee Organization for a renewal of such status, shall be made in the same manner as a request for initial recognition pursuant to the provisions hereof.

The status of any Employee Organization as a Recognized Employee Organization shall be revoked or suspended if the City Manager finds:

- A. That the Recognized Employee Organization no longer complies with the provisions of this Resolution relating to its qualifications; or
- B. That the Organization has interfered, intimidated, restrained, coerced, or discriminated against any public employee who is exercising, or who desires to exercise, rights pursuant to Section 3502 of the Act; or
- C. That the employee organization by its action has interfered with the normal operations and services of the City.

The City Manager shall consider all relevant, competent evidence and, based upon the evidence at hand, shall determine whether or not the Recognized status of the Organization should be revoked. The decision of the City Manager shall be final and conclusive.

SECTION 4. MEET AND CONFER PROCESS

After an Employee Organization is designated as a Recognized Employee Organization, pursuant to the provision hereof, such organization shall, in writing, advise the City Manager of the names, addresses and telephone numbers of the persons who will act as representatives of such organization for the meet and confer process. It shall be the responsibility of each employee organization to forthwith advise the City Manager of any change in such representation. The City's representatives shall be required to meet only with those persons currently designated as representatives from that organization.

For the purpose of the meet and confer process, the Recognized Employee Organization shall represent only the members

of its organization.

A Recognized Employee Organization, by and through its designated representatives, may submit to the City's representatives a written proposal, in such form as the Recognized Employee organization deems appropriate, indicating the items and matters it wishes to submit for discussion in the meet and confer process as required pursuant to the provisions of said act. Any Recognized Employee Organization which does not, within the time prescribed each year by the City, submit such a written proposal shall be deemed, for all purposes, to have waived its rights to engage in the meet and confer process during that calendar year. Meet and confer sessions may be held at other times than specified herein, only upon the mutual consent of the representatives of the City and the Recognized Employee Organization. Consideration of other matters at other times will be made upon mutual agreement.

Employees of the City shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations including but not limited to wages, hours, and other terms and conditions of employment as provided for in Sections 3500 et seq. of the Government Code. Employees of the City shall also have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the City. No employee shall be interfered with, intimidated, restrained, coerced, or discriminated against by the City or by any employee organization because of his/her exercise of these rights.

Such right of representation does not extend to those things which are necessary to manage, control, and administer the City's operations including, but not limited to, determining the mission of the City's constituent departments, commissions, and boards; setting standards of service, determining the procedures and standards of selection for employment and promotions; directing employees; taking disciplinary action; relieving employees from duty because of lack of work or other legitimate reasons maintaining the efficiency of governmental operations; determining the methods, means, and personnel by which governmental operations are to be conducted; determining the content of job classifications; taking all necessary actions to carry out the City's mission in emergencies; exercising control and discretion over the City's organization and the technology of performing its work; regulating the use of all equipment and other property of the City; establishing, altering or disposing of operations, departments, commissions or boards; determining the work to be contracted out; and determining the complement of employees needed or assigned to a particular function or work location.

SECTION 5. EMPLOYEE ORGANIZATION PRIVILEGES

- A. Formally recognized employee organizations may have regular dues of its members deducted from pay checks in accordance with the procedure prescribed by the City Manager.
- B. Formally recognized employee organizations may select not more than three (3) employee members of such organization to attend scheduled meetings with management representatives on subjects within the course of representation during regular working hours without loss of compensation. An employee representative shall not leave his/her duty or work station or assignment without specific approval of the department head or other authorized management representative.
- C. Reasonable access to work locations shall be granted officers of recognized employee organizations and their officially designated representatives for the purpose of processing grievances or contacting members of the organization concerning matters within the scope of representation. Such officers or representatives shall not enter any work location without the consent of the department head. Access shall be restricted in such a manner so as to not interfere with the normal operations of the department or established safety or security requirements.
- D. Solicitation of membership and activities concerning the internal management of the employee organization, such as collecting dues, holding membership meetings, campaigning for office, conducting elections and distributing literature shall not be conducted during work hours.
- E. Recognized employee organizations may use portions of City bulletin boards as designated by the City Manager or his/her designee. All material posted on City bulletin boards must receive the prior approval of the appropriate department head.
- F. The City will make available to recognized employee organizations such nonconfidential information pertaining to employment relations in the same manner and format as contained in its public records,

subject to the limitations and conditions set forth herein and in Government Code Sections 6250 et seq.

- G.** Employee organizations may, with the prior approval of the City Manager, be granted the use of City facilities during non-work hours for meetings of the City employees consistent with established City policy regarding use of City facilities. The use of City equipment, other than items normally used in the conduct of business meetings, is strictly prohibited. No employee may attend a meeting of the employee organization during his/her working time without prior approval of the City Manager.
- H.** Participation by an employee in a strike or work stoppage may be unlawful and shall subject the employee to disciplinary action which may include discharge from employment. No employee organization, its representatives or members, nor any other employee shall engage in, cause, instigate, encourage, or recognize any strike or work stoppage of any kind as determined by state laws.

RULE 22 - PAYROLL DEDUCTIONS

Deductions of authorized amounts may be made from employees' pay for the following purposes:

- A.** Withholding tax;
- B.** Contribution for retirement benefits;
- C.** Payment of hospitalization, major medical and life insurance premium;
- D.** Payment of non-industrial disability premium;
- E.** Payment out of or savings in the Costa Mesa Municipal Employees' Federal Credit Union;
- F.** Contributions to the United Way Fund of Costa Mesa;
- G.** Any other purposes as may be authorized by the City Council and/or the City Manager.

RULE 23 - MANAGEMENT PERSONNEL

Any department head, assistant department head, division head or any employee having the authority to effectively recommend hiring, transfer, suspension, promotion, discharge and/or who has the authority to assign and direct work and/or evaluate work performance shall be determined management personnel and are specifically prohibited from representing any employee organization which represents other City employees for the purpose of representation on matters of wages, hours, and/or working conditions.

All employees of the City Manager's office, Personnel office and any employees determined by the department head, with approval of the City Manager, having access to or preparing materials, information and recommendations on behalf of the City in its dealings with employee organizations shall be deemed a confidential employee and are specifically prohibited from representing any employee organization for the purpose of representation on matters of wages, hours and/or working conditions. Other than for reasons of confidentiality, all employees (classifications) represented by a recognized employee organization shall have the right to represent their classification for Meet & Confer.

A management representative team shall be appointed by the City Manager and shall consist of a minimum of three (3) management personnel. The City Manager shall specify not less than one (1) nor more than three (3) representative teams as in his judgment shall be necessary in each situation.

Nothing in this Rule prohibits such employees from joining, participating or refusing to join or participate in any employee organization.

RULE 24 - DEPARTMENTAL RULES AND REGULATIONS

Each department may establish a department manual of rules and regulations which shall be approved by the City Manager. These Personnel Rules may be further defined and qualified but not superseded by administrative regulations or Council Policies.

RULE 25 - GRIEVANCE PROCEDURE

SECTION 1. DEFINITION

A "grievance" is a formal, written allegation by a grievant that he/she has been adversely affected by an existing violation, misinterpretation or misapplication of the specific provisions of the Memorandum of Understanding and/or provisions of the Personnel Rules and Regulations or other City policies. Other matters for which a special method of review is provided by law, ordinance, resolution, or by administrative regulations and procedures of the City, are not within the scope of this procedure. This procedure is not to be used in lieu of the Discipline Appeals Procedure.

SECTION 2. GRIEVANCE PROCEDURE

1. **Informal Resolution:** Every effort shall be made to resolve a grievance through discussion between the employee and his/her immediate supervisor. It is the spirit and intent of this procedure that all grievances are settled quickly and fairly without subsequent discrimination against employees who may seek to adjust a grievance. Every effort should be made to find an acceptable solution at the lowest level of supervision. Within fifteen (15) calendar days after a grievant knew, or by reasonable diligence should have known, of the condition upon which a grievance may be based, the grievant shall attempt to resolve it by an informal conference with the grievant's immediate supervisor.
2. The immediate supervisor shall render his/her decision in writing within fifteen (15) calendar days of the informal conference. If the problem cannot be resolved between the employee and the supervisor, the employee may, within ten (10) calendar days from the date of receiving the answer from his/her supervisor, request and be granted an interview with the division manager, if one exists, in order to discuss the grievance.
3. The division head shall render his/her decision in writing within fifteen (15) calendar days of receiving the appeal. If the division head and employee cannot reach a solution to the grievance, the employee may, within ten (10) calendar days from the date of receiving the answer from the division manager, request, in writing, and be granted an interview with the department head.
4. The department head shall render his/her decision in writing within fifteen (15) calendar days of receiving the appeal. If the department head and employee are unable to arrive at a satisfactory solution, the employee may, within fifteen (15) calendar days from the date of the decision by the department head, submit a written appeal to the City Manager.
5. The City Manager shall review the grievance and respond to the employee within twenty (20) calendar days of receiving the appeal. The City Manager shall have the option of scheduling a meeting to hear the grievance, or a response shall be provided in writing. This will be considered an expression of management's viewpoint, and shall be the final administrative review.
6. If the time limits for employees' appeals at any step should elapse, the grievance shall be considered withdrawn. Time limits may be extended by mutual consent. If the City fails to respond within the prescribed time limits, the grievance will be deemed to have been denied and the employee may go to the next step.
7. The employee may request the assistance of another person of his/her own choosing in preparing and presenting his/her appeal at any level of review. In the event the employee desires the presence of a representative who is an employee of the City, he/she shall make such request through the supervisor and the supervisor shall make the necessary arrangements for the employee representative to be present.
8. The employee and/or his/her representative may use a reasonable amount of work time as determined by the appropriate supervisor or department head in presenting the appeal. However, no employee shall absent himself/herself without first being excused by his/her supervisor.

9. No employee shall be required to be represented by an employee organization in processing a grievance.
10. Employees shall be assured freedom from reprisal for using the grievance procedures by both the City and the employee organization.
11. The settlement terms of a grievance which is processed by an employee individually or by an informally recognized employee representative shall not conflict with the express provisions of a Memorandum of Understanding between the City and the formally recognized employee organization for such unit, if any.
12. A group grievance may be filed when one (1) set of circumstances or occurrences affects more than one (1) employee in the same manner or to the same extent. The group may file one (1) document which all members of the group have read and signed. Members of the group shall be limited to those who have signed the grievance. The resolution of a group grievance may not be consistent among all employees in the group grievance due to differences in the circumstances or occurrences that brought about the grievance.

A group grievance affecting all members of a class or the organization as a whole may be brought by the employee organization itself. In such case the procedure shall be commenced directly at the City Manager level within fifteen (15) working days after authorized representatives of the employee organization knew or by reasonable diligence should have known of the condition giving rise to the grievance and shall be subject to all applicable time limitations and the provisions set forth above.

RULE 26 - DISCIPLINARY PROCEDURES

SECTION 1. BASIS FOR DISCIPLINARY ACTION

The tenure of every City employee shall be based on reasonable standards of personal conduct and job performance. Failure to meet such standards shall be grounds for appropriate disciplinary action, which shall be commensurate with the seriousness of the offense and with consideration of the employee's prior performance record. Disciplinary action shall be based upon any of the following grounds:

- A.** Fraud in securing employment or making a materially false statement on an application for employment or on any supporting documents furnished with or made a part of any application.
- B.** Incompetency such as failure to comply with the minimum standards for an employee's position for a significant period of time.
- C.** Neglect of duty, such as failure to perform the duties required of an employee's position.
- D.** Willful disobedience and insubordination such as a willful failure to submit to duly appointed and acting supervision or to conform to duly established orders or directions of persons in a supervisory position.
- E.** Dishonesty involving employment.
- F.** Being under the influence of alcohol or intoxicating drugs while on duty without a prescription.
- G.** Addiction to or habitual use of alcoholic beverages, narcotics or any habit forming drug.
- H.** Inexcusable absence without leave.
- I.** Conviction of a felony or conviction of a misdemeanor involving moral turpitude. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony or any offense involving moral turpitude is deemed to be a conviction within the meaning of this section.
- J.** Discourteous treatment of the public.
- K.** Improper or unauthorized use of City property.

- L. Violation of the rules and regulations of any department.
- M. Any act of conduct undertaken which, either during or outside of duty hours, is of such a nature that it causes discredit to fall upon the City, the employee's department or division.
- N. Failure to maintain proper conduct during working hours causing discredit to the employee's department or division.
- O. Abuse of sick leave.
- P. Inattention to duty, tardiness, indolence, carelessness or negligence in the care and handling of City property.
- Q. The employee's failure to resolve a physical or mental infirmity(s) or defect(s), when it is within the capacity of the employee to do so and when directed by his/her supervisor.
- R. Outside employment which conflicts with the employee's position and is not specifically authorized by the department head.
- S. Acceptance from any source of any emolument, reward, gift or other form of remuneration in addition to the employee's regular compensation, as a personal benefit to the employee for actions performed in the normal course of the employee's assigned duties.
- T. Falsification of any City report or record, or of any report or record required to be, or, filed by the employee.
- U. Violation of any of the provisions of the City Code, ordinances, resolutions, or any rules, regulations or policies which may be prescribed by the City Council, City Manager, department manager or supervisor.
- V. Political activities precluded by Local, State or Federal law.
- W. Other acts which are incompatible with service to the public.

SECTION 2. TYPES OF DISCIPLINE

Types of discipline include the following: warning/reprimand, suspension, demotion or reduction in pay and dismissal. Voluntary demotions as well as performance evaluations are not considered disciplinary actions. The appeal or the review of a performance evaluation is limited to the supervisor's supervisor, whomever that may be. The following procedures shall be followed when, in the judgment of the department head, an employee has committed an act or omission that justified the disciplinary action indicated. Except for written warnings/reprimands, the department head or his/her designee shall advise employees of contemplated disciplinary actions in writing and allow the employee an opportunity to respond to such charges prior to taking action.

When life, or employee safety, is endangered, or the self-control of an employee is questionable, a supervisor shall take immediate action to reduce or eliminate the danger or to establish control. In case of an emergency, an employee shall have all of the rights set forth herein, except, in the discretion of the appointing authority, an employee may be placed on administrative leave with pay pending predisciplinary procedures. The Personnel Director must be contacted immediately.

- A. Warning/Reprimand: If the warning/reprimand is in writing it should be signed by the employee acknowledging receipt. The department head shall give the employee a copy and forward a copy to the Personnel Director for review and retention in the employee's personal history file. A written warning/reprimand shall contain a description of the events which necessitated the action, specific expectations of change by the employee, and notice of further action in the event a change by the employee does not occur. An employee shall have the right to attach a written rebuttal and/or file an appeal.
- B. Suspension: A department head may suspend an employee with or without pay from his/her position. Any placement of an employee on administrative leave pending predisciplinary response shall be with

pay. The appointing authority shall advise the Personnel Director in writing of such intended action and shall give a copy of such statement to the employee. The written statement shall contain a description of the events which necessitated the suspension, a statement of the charges, notification that the employee may review and be provided with the materials leading to the suspension, the right of the employee to meet with the appointing authority and/or to respond in writing within a reasonable time frame to the charges, and notice of further action in the event a change by the employee does not occur. Unless extended by approval of the City Manager on written recommendation of the department head, the maximum period of suspension shall be thirty (30) calendar days. These procedures are available prior to the implementation of discipline.

Disciplinary actions involving suspensions of four (4) work days or less, as well as oral and written reprimands are not exempt from the notification requirements. However, in such disciplinary actions the employee does not have the right to respond to the appointing authority prior to the effective date of the proposed action.

- C. Demotion or Reduction in Pay: A department head shall advise the Personnel Director in writing of his/her intention to demote or reduce the salary of an employee prior to taking such action. In demoting an employee or reducing his/her salary, the department head shall make a written notice and shall give a copy of said notice for demotion or reduction in pay to the employee and forward a copy to the Personnel Director for review and retention in the employee's personal history file. The written statement shall contain a description of the events which necessitated the demotion, a statement of the charges, notification that the employee may review and be provided with the materials leading to the demotion, the right of the employee to meet with the appointing authority and/or respond in writing within a reasonable time frame to the charges, and notice of further action in the event a change by the employee does not occur.
- D. Dismissal: A department head shall advise the Personnel Director in writing of his/her intention to dismiss an employee prior to taking such action. In dismissing an employee, the department head shall make a written notice and shall give a copy of said notice of dismissal to the employee and forward a copy to the Personnel Director for review and retention in the employee's personal history file. The written statement shall contain a description of the events which necessitated the dismissal, a statement of the charges, notification that the employee may review and be provided with the materials leading to the dismissal, and the right of the employee to meet with the appointing authority and/or respond in writing within a reasonable time frame to the charges. These procedures are predisciplinary in nature.

SECTION 3. NOTICES

Written notices will be given to the employee in person whenever possible and the employee's signature obtained to indicate receipt. In the absence of personal service, the notice may be sent by registered mail.

SECTION 4. EMPLOYEE'S RESPONSE

An employee's opportunity to respond to the appointing authority is not intended to be adversarial in nature. An employee has the right to have a representative of his/her own choosing at the meeting. The employee need not be accorded the opportunity to cross-examine a department's witnesses, nor to present a formal case in opposition to the proposed discipline. However, the limited nature of this response does not obviate the appointing authority's responsibility to initiate further investigation if the employee's version of the facts raises doubts as to the accuracy of the department head's information leading to the discipline proposal. An employee may elect not to respond, thereby waiving any further predisciplinary response.

The appointing authority will evaluate the proposed discipline in light of the employee's response, if any. Within five (5) working days of the employee's response, or deadline for response, a decision will be transmitted in writing to the employee. Service of the decision will be in person or by registered mail.

SECTION 5. APPEAL PROCEDURES

(Each specific memorandum of understanding may contain variations to the following and should be referred to for additional information).

Any permanent employee in the classified service shall have the right to appeal any written reprimand, termination, suspension, denial of a merit increase, reduction in salary, or nonprobationary demotion. The appeal process shall not be applicable to those positions which may be deemed exempt from the classified service or to probationary employees. The appeal process shall not be applicable to verbal reprimands and performance evaluations.

An employee desiring to appeal the imposition of discipline shall have ten (10) calendar days after receipt of the notification to file an appeal. The employee's request for appeal must be addressed to the Personnel Director and received in the Personnel Department so that same is date stamped by the Personnel Department within the 10-day period. If, within the 10-day appeal period, the employee involved does not file said appeal, unless good cause for the failure is shown, the action shall be considered conclusive and shall take effect as prescribed. If, within the 10-day appeal period, the employee involved files such notice of appeal by giving written notice of appeal to the Personnel Department, the appeal process shall be established as follows:

If the problem cannot be resolved between the employee and the supervisor, the employee may, within ten (10) calendar days from the date of receiving the answer from his/her supervisor, request and be granted an interview with the department head or his/her designee, in order to discuss the appeal.

The department head shall render his/her decision in writing within fifteen (15) calendar days of receiving the appeal. If the department head and employee are unable to arrive at a satisfactory solution, the employee may, within fifteen (15) calendar days from the date of the decision by the department head, submit a written appeal to the City Manager, through the Personnel Department.

- A. The employee shall file a written request with the Personnel Department for a full evidentiary hearing before the City Manager.
- B. The City Manager or his/her designee shall serve as the hearing officer.
- C. Where practicable, the date for a hearing shall not be less than 20 calendar days, nor more than 60 calendar days, from the date of the filing of the appeal with the Personnel Director. The parties may stipulate to a longer or shorter period of time in which to hear the appeal. All interested parties shall be notified in writing of the date, time, and place of hearing.
- D. All hearings shall be private provided, however, that the hearing officer shall, at the request of the employee, open the hearing to the public.
- E. Subpoenas and subpoenas duces tecums pertaining to a hearing shall be issued at the request of either party, not less than seven (7) calendar days, prior to the commencement of such hearing. After the commencement of such hearing, subpoenas shall be issued only at the discretion of the hearing officer.
- F. The hearing need not be conducted in accordance with technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rules which might make improper admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions, and irrelevant and unduly repetitious evidence shall be excluded. The hearing officer shall not be bound by technical rules of evidence. The hearing officer shall rule on the admission or exclusion of evidence.
- G. Each party shall have these rights: To be represented by legal counsel or other person of his/her choice; to call and examine witnesses; to introduce evidence; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him/her to testify; and to rebut the evidence against him/her. If the employee does not testify in his/her own behalf, he/she may be called and examined as if under cross-examination. Oral evidence shall be taken only on oath or affirmation. A court reporter will be engaged to record the hearing, unless the parties (City, hearing officer, employee/employee representative) mutually agree that same is not necessary. If a court reporter is engaged the cost shall be shared equally by the parties.
- H. The hearing shall proceed in the following order, unless the hearing officer, for special reason,

otherwise directs:

1. The party imposing discipline shall be permitted to make an opening statement;
 2. The appealing party shall then be permitted to make an opening statement;
 3. The party imposing disciplinary action shall produce the evidence on his/her part; the City bears the burden of proof and burden of producing evidence;
 4. The party appealing from such disciplinary action may then open his/her defense and offer his/her evidence in support thereof; the employee bears the burden of proof and the burden of producing evidence for any affirmative defenses asserted;
 5. The parties may then, in order, respectively offer rebutting evidence only, unless the hearing officer for good reason, permits them to offer evidence upon their original case;
 6. Closing arguments shall be permitted and written briefs may be permitted at the discretion of the hearing officer.
- I.** The hearing officer shall determine relevancy, weight, and credibility of testimony and evidence. He/she shall base his/her findings on the preponderance of evidence. During the examination of a witness, all other witnesses, except the parties and Personnel Department representatives, shall be excluded from the hearing unless the hearing officer, in his/her discretion, for good cause, otherwise directs. No still photographs, moving pictures, or television pictures shall be taken in the hearing chamber during a hearing. The hearing officer, prior to or during a hearing, may grant a continuance for any reason he/she believes to be important to reaching a fair and proper decision. The hearing officer shall render his/her judgment as soon after the conclusion of the hearing as possible and in no event later than 30 days after conducting the hearing. His/her decision shall set forth which charges, if any, are sustained and the reasons therefore. The opinion shall set forth findings of fact and conclusions.
- J.** The hearing officer may recommend sustaining or rejecting any or all of the charges filed against the employee. He/she may recommend sustaining, rejecting, or modifying the disciplinary action invoked against the employee.
- K.** The hearing officer's opinion and recommendation shall be filed with the City Manager, with a copy sent to the charged employee, and the Personnel Director and shall set forth his/her findings and recommendations. If it is a dismissal hearing and a dismissal is not the hearing officer's recommendation, the opinion shall set forth the date the employee is recommended to be reinstated and/or other recommended action. The reinstatement date, if appropriate, may be any time on or after the date of disciplinary action.
- L.** The decision of the City Manager shall be final and conclusive. Copies of the City Manager's decision, including the hearing officer's recommendation(s) shall be filed where appropriate, including the employee's personnel file, unless no discipline is upheld by the City Manager.
- M.** Each party shall bear its own witness and attorney fees. If either party unilaterally cancels or postpones a scheduled hearing, thereby resulting in a fee charged by the hearing officer or court reporter, then the party responsible for the cancellation or postponement shall be solely responsible for payment of that fee.
- N.** In the case of suspension, demotion, reduction in salary, or dismissal prescribed by the City Manager, the time of such suspension, demotion or dismissal shall be effective from the first day after such delivery of said decision or shall relate back to and be effective as of the date the employee was disciplined pending hearing before and decision by the City Manager, whichever is applicable. If discipline imposed resulted in loss of pay, and the decision results in reduction or elimination of loss of pay, the pay loss shall be restored to the employee based on the number of standard work hours lost computed at his/her then base hourly rate.
- O.** The employee may be placed on administrative leave until resolution/conclusion of the appeals process.

- P.** The provisions of Section 1094.6 of the Code of Civil Procedure shall be applicable to proceedings under this section.

RULE 27 - COOPERATION

Every officer and employee of the City of Costa Mesa shall cooperate with the Personnel Officer in order to completely fulfill the objectives and purposes of the Personnel Ordinance and these Rules.