

# **MEMORANDUM** **OF UNDERSTANDING**



2018  
2022

*Between The Representatives of  
The Costa Mesa Police Management Association  
And the City of Costa Mesa*

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## **ARTICLE 1 - RECOGNITION/PREAMBLE**

1.1 By resolution of the City Council of the City of Costa Mesa, and pursuant to the provisions of the Meyers-Milias-Brown Act, California Government Code Section 3500, et seq., the City of Costa Mesa (hereinafter referred to as "City") recognizes the Costa Mesa Police Management Association (hereinafter referred to as "Association" or "CMPMA") as the exclusive representative and the agent for collective bargaining purposes of sworn Police Captains and Police Lieutenants employed in the Costa Mesa Police Department.

1.2 This Memorandum of Understanding ("MOU") has been prepared by representatives of the City and representatives of the Association who have met and conferred in good faith, examining a number of proposals and counter proposals concerning wages, hours of employment, working conditions, fringe benefits and other terms and conditions of employment for the sworn officers of the Costa Mesa Police Department as defined herein. The Parties to this MOU are the City and the Association, which are jointly recognized and referred to herein below as the "Parties."

1.3 It is the mutual understanding of the City and the Association that this MOU shall be submitted to the Costa Mesa City Council upon the joint recommendations of the Parties that this MOU be adopted. The City Council will take such action as may be needed to implement this MOU.

1.4 The City and the Association hereby acknowledge that the terms of this MOU may not cover all terms of employment relating to wages, hours and conditions of employment at the City of Costa Mesa. These parties further acknowledge that any term or condition of employment which is not expressly covered herein, but is expressly covered by existing ordinances, resolutions, policies and regulations of the City, including the Personnel Rules and Regulations presently in effect, shall be controlled by the existing provisions of said ordinances, resolutions, policies, and regulations to the extent that said policies and regulations do not change, abrogate, modify or amend any express term of this MOU. All other terms and conditions of employment in effect at the time of execution of this MOU shall remain status quo during the term hereof, unless such a term or condition is excepted from collective bargaining and the scope of representation as set forth in California Government Code 3504 or constitutes an emergency matter as set forth in California Government Code 3504.5.

1.5 If any portion of this MOU is found to be unlawful, in conflict or inconsistent with existing laws, regulations, or ordinances; or determined to be invalid or unenforceable by an administrative or judicial tribunal with competent jurisdiction, such portion or part of this MOU shall be superseded and not enforced. The remainder of this MOU shall continue in full force and effect, and shall be enforced through the term of the agreement pursuant to Government Code Section 3500, et seq.

1.6 Continuous, uninterrupted and efficient service to the community by the City and its employees, and orderly employer-employee relations are essential considerations of this MOU. Accordingly, the Association agrees, on behalf of itself and its members, individually and collectively, that there shall not be any strikes, non-informational picketing, boycotting, work stoppages, slow-down strikes, or any other concerted job action or refusal to render services, including overtime or any other curtailment or restriction of work and service at any time during the term of this MOU.

1.7 The Association recognizes its duty and obligation to comply with the provisions of Section 1.6 of this MOU and shall make every reasonable effort to assure that all employees covered by this MOU similarly do so. In the event of any concerted activity by employees in contravention to the provisions or intent of Section 1.6, the Association hereby agrees to direct its members to cease any such actions or

activities forthwith. No employee covered by this MOU shall be entitled to any benefits or wages whatsoever while engaged in any activities or actions prohibited by Section 1.6 of the MOU

## **ARTICLE 2 - TERM OF AGREEMENT**

2.1 The term of this MOU will commence on July 1, 2018, and expire in the pay period, which includes June 30, 2022.

## **ARTICLE 3 - BASIC SALARIES AND WAGES**

3.1 Employees covered by this MOU shall be compensated at the established monthly base salary rates under the Basic Pay Schedule for covered employees. The two classifications in the Association under this Schedule (Police Lieutenant and Police Captain) shall be assigned a range number established by the City Council resolution.

3.2 The City will adjust the monthly base salary for members of the Association as follows:

- Effective in the pay period which includes January 1, 2019, employees shall receive a three percent (3.0 %) base salary increase.
- Effective in the pay period which includes July 1, 2019, employees shall receive a three percent (3.0%) base salary increase.
- Effective in the pay period which includes July 1, 2020, employees shall receive a three percent (3.0%) base salary increase.
- Effective in the pay period which includes July 1, 2021, employees shall receive a three percent (3.0%) base salary increase.

## **ARTICLE 4 - HEALTH INSURANCE**

4.1 **IRS SECTION 125 BENEFIT PLAN** - The City shall provide the amount listed below toward the payment of premiums under an IRS Section 125 Benefit Plan. The City may also offer other pre-tax benefits.

4.2 **PUBLIC EMPLOYEES' MEDICAL AND HOSPITAL CARE ACT** - The City contracts with the California Public Employees' Retirement System ("CalPERS") for medical insurance pursuant to the Public Employees' Medical and Hospital Care Act ("PEMHCA"). The City will contribute the annual CalPERS statutory minimum on behalf of each participant in the program, which is included in the amount of the City's contribution to the flexible benefit account (i.e., the Section 125 Benefit Plan) described below. Eligible employees may select any of the medical insurance plans offered by CalPERS.

4.3 **MANDATORY BENEFITS** - Employees must use a portion of the City contribution to pay for life insurance and long term disability. Employees also must enroll in medical insurance unless the employee meets the eligible opt out requirements to receive cash in lieu.

4.4 **QUALIFICATION FOR FLEX CONTRIBUTION** - Employees must receive compensation for the entire pay period to receive the flexible benefit contribution amount. Use of accrued leave qualifies as compensation for this purpose. Employees will be ineligible for the flexible benefit contribution if the employee records absence without pay hours within the pay period except for the following reasons:

- If an employee exhausts his/her accrued leaves prior to the end of the pay period, he/she shall receive the flex contribution for that pay period.
- Disciplinary actions will not apply to this article/qualification i.e. suspensions without pay.

4.5 **CONTRIBUTION AMOUNT** - For those employees who enroll in City offered coverage, the City's contribution towards each employee's flexible benefit account is as follows: two thousand one hundred and nineteen dollars (\$2,119.00) per month effective the pay period which includes January 1, 2019. This amount is inclusive of the CalPERS statutory minimum amount for each year. An employee who selects benefits which cost less than the dollars contributed by the City (which also requires the employee to select life insurance and long term disability per Article 4.3) shall receive the remainder of the flexible benefit contribution in cash up to a maximum of one thousand and sixty dollars (\$1,060.00) per month.

4.6 **WAIVER OF INSURANCE** - An employee may opt out of medical coverage offered by the City and receive cash in lieu only if the employee provides before the start of each plan year, an attestation that the employee and his or her tax family have minimum essential coverage through another source (other than coverage in the individual market, whether or not obtained through Covered California) for the plan year. The City will not pay cash in lieu if the City knows or has reason to know that the employee or an individual in the employee's tax family does not have the required alternative coverage.

Any employee in the unit who meets the requirements to opt out of medical coverage can receive one thousand and sixty dollars (\$1,060.00) per month. Those employees who meet the requirements and opt out of medical coverage will still receive an employer contribution to cover the mandatory life and disability insurance benefits.

## **ARTICLE 5 - RETIREMENT**

5.1 **CALPERS** - The City contracts with CalPERS for retirement benefits.

A. Employees Who Are Not "New Members" as Defined by Government Code Section 7522.04(f) – i.e., "Classic Members"

1. Retirement Formula - The City contracts with CalPERS to provide the 3% at 50 retirement formula as set forth in California Government Code Section 21362.2 for all employees covered by this MOU hired before December 31, 2012 or lateral employees hired after that date who qualify as "classic members" under the Public Employees' Pension Reform Act of 2013 ("PEPRA").
2. Retirement Benefit Calculation Period - The City's contract with CalPERS provides for the "Single Highest Year" retirement benefit for these employees per Government Code section 20042. The retirement benefit is based on the highest annual compensation for the twelve (12) consecutive months selected by the employee or not selected, the employee's last twelve (12) months of employment.

3. Payment of Employee/Member Contribution:

- a. Effective at the beginning of the pay period following City Council approval of this MOU, these employees will pay three percent (3.0%) compensation earnable towards their CalPERS member contribution. The City pays and reports six percent (6.0%) as an Employer Paid Member Contribution (EPMC) under Government Code section 20636(c)(4) pursuant to section 20691.
- b. Effective at the beginning of the pay period which includes July 1, 2019, these employees will pay six percent (6.0%) compensation earnable towards their CalPERS member contribution. The City pays and reports three percent (3.0%) as an Employer Paid Member Contribution (EPMC) under Government Code section 20636(c)(4) pursuant to section 20691.
- c. Effective at the beginning of the pay period which includes July 1, 2020, these employees will pay the full nine CalPERS member contribution of nine percent (9%) of compensation earnable towards their CalPERS member contribution. The City shall pay and report zero percent (0%) of compensation earnable as an Employer Paid Member Contribution (EPMC) under Government Code section 20636(c)(4) pursuant to section 20691.

4. Cost Sharing:

- a. Classic member employees subject to the 3% @ 50 formula pay an additional five percent (5%) compensation earnable as cost sharing into their employee account with CalPERS in accordance with Government Code section 20516(a).

B. For "New Member" Employees

1. Retirement Formula - Unit members who are defined as "new members" under the PEPRRA, are covered by the 2.7% @ 57 formula provided for by the Public Employees' Retirement Law at Government Code section 7522.25(d).
2. Retirement Benefit Calculation Period - These employees' final compensation will be based on the highest annual average compensation earnable during the three consecutive years of employment immediately preceding the effective date of his or her retirement or any other three consecutive year period chosen by the employee as set forth in Government Code section 7522.32(a).
3. Payment of Employee/Member Contribution - New member employees are responsible for paying the employee contribution of one-half of the total normal cost of the plan, as defined by CalPERS, through a payroll deduction. This amount will be determined by CalPERS in the future.
4. Cost Sharing:
  - a. New member employees pay additional retirement contributions as cost sharing as follows:

- i. Effective at the beginning of the pay period which includes July 1, 2018, these employees will pay an additional percentage of their compensation earnable as cost sharing in accordance with Government Code section 20516(f) so that when their employee contribution (the rate established by CalPERS for new members) and the cost share are combined, these employees will be paying fourteen percent (14%) of compensation earnable for retirement contributions.
- ii. Notwithstanding subparagraph 4(a) above, subsequent to July 1, 2018, the cost share payment for new member employees will fluctuate if the normal cost rate changes. If the annual rate established by CalPERS for new members reduces, the cost share (per Government Code section 20516(f) will go up so that when combined with the rate established for new members, the employee is paying a total of fourteen percent (14%) for retirement. If the rate increases above its rate as of July 1, 2018, the cost share (per Government Code section 20516(f) will go down so that when combined with the half the normal cost rate, the employee is paying a total of fourteen percent (14%) for retirement. If the annual rate established by CalPERS for new members goes above fourteen percent (14%), there will be no cost share payment due from the new member employees. Rather, the employee will just pay the applicable annual rate established by CalPERS for new members as determined by CalPERS.

C. Adoption of the IRS Code section 414(h)(2) Resolution

The City has adopted the CalPERS resolution in accordance with IRS Code section 414(h)(2) to ensure that the employee contribution is made on a pre-tax basis.

5.2 **CALPERS CONTRACT** - The City will continue to provide pension benefits to represented employees in accordance with the CalPERS contract in effect on the effective date of this MOU. The City's contract with CalPERS for employees covered by this MOU includes the following options:

- Section 20042 (One Year Final Compensation, only applies to classic member employees)
- Section 20516 (Employee Cost Share, only applies to classic member employees)
- Section 20965 (Credit for Unused Sick Leave)
- Sections 21624/21626 (Post-Retirement Survivor Allowance, only applies classic member employees)
- Section 21620 (Retired Death Benefit of \$500)
- Section 21329 (COLA of 2%)
- Section 21362.2 (3% @ 50 Benefit Formula, only applies to classic member employees)
- Section 20903 (Two Years Additional Service – Golden Handshake)
- Section 21635 (Post-Retirement Survivor Allowance Continues After Remarriage)
- Section 21573 (Third Level of 1959 Survivor Benefits)
- Section 21551 (Death Benefit Continues After Remarriage)
- Section 20055 (Credit for Service Before CalPERS Contract)
- Section 20938 (Limited Prior Service Credit to Employees on Contract Date)
- Section 21536 (Local System Service Credit for Basic Death Benefit)
- Section 20481 (Transfer of Local System Assets to CalPERS)
- Section 21024 (Military Stats 76)

- Section 21023.5 (Peace Corps/AmeriCorps Service)
- Section 21027 (Military Retiree)
- IRC 414(h)(2) (Pre-tax payroll deduction plan for member contributions and service credit purchase)

## **ARTICLE 6 - RETIREE MEDICAL & 401(a) DEFERRED COMPENSATION PLAN**

6.1 **RETIREE MEDICAL** - The Defined Contribution Retirement Health Savings Plan (Plan) went into effect on January 1, 2004 and payments made by the City were suspended in 2010. The purpose of the Plan was to establish a tax protected savings program for every full-time employee that:

- Provided a retiree medical benefit for employees who were hired after January 1, 2004 who will not be eligible for the health insurance contribution under the Council Policy 300-1.
- Provided a supplemental benefit to the City contribution under Council Policy 300-1 for employees hired before January 1, 2004.

The program required mandatory participation by all full-time employees. However, in 2010, payments by both the City and employees were permanently suspended. Up until 2010, employees made a monthly contribution to the plan equal to 1% of their base monthly salary, which was matched by a 1% salary monthly contribution from the City into employees' accounts. The account assets which accumulated, plus investment earnings, will be used in retirement to pay health insurance premiums and other eligible out-of-pocket medical expenses such as deductibles, co-payments, vision care or dental care. The previously made employee contributions plus vested employer contributions are portable if an employee should leave employment with Costa Mesa prior to retirement. However, since 2010, no additional funds (either City funds or employee funds) were added to the plan and the funds are currently earning interest and will be available to employees at retirement.

For all employees in the unit, the City will pay the CalPERS statutory minimum for each member of the bargaining unit for retiree medical benefits.

6.2 **401(a) DEFERRED COMPENSATION PLAN FOR POLICE CAPTAINS** - The 401(a) deferred compensation plan provides Police Captains with a tax-deferred savings plan for future financial planning. The City provides a one half of one percent (.5%) per pay period contribution for each Police Captain in the Association into the employee's account in the 401(a) plan.

## **ARTICLE 7 - BENEFIT REVIEW COMMITTEE**

7.1 CMPMA shall maintain one representative on the City's Benefit Review Committee. The Committee continually evaluates the City's benefit programs and makes recommendations on plan changes, benefit levels, payroll deductions and the addition or deletion of plans.



## **ARTICLE 8 - DRUG AND ALCOHOL TESTING POLICY**

8.1 The Costa Mesa Police Department Drug and Alcohol Testing Policy applies to employees represented by the Association. The Policy permits reasonable suspicion drug and alcohol testing. The Policy is incorporated into this MOU by reference.

## **ARTICLE 9 - POST PAY**

9.1 **PAY FOR CERTIFICATIONS ISSUED BY THE STATE OF CALIFORNIA COMMISSION ON POLICE OFFICER STANDARDS AND TRAINING (“POST”)** - Employees in the Association shall be eligible for additional pay as follows:

A. **Advanced Certificate - Police Lieutenant**

Employees at the rank of Police Lieutenant shall receive ten percent (10%) of base pay for receipt of a POST Advanced Certificate. Employees must present the Certificate to the City to receive the pay. Police Captains are not eligible for this pay.

B. **Management Certificate - Police Captain**

Employees at the rank of Police Captain shall receive five percent (5%) of base pay for receipt of a POST Management Certificate. Employees must present the Certificate to the City to receive the pay. Police Lieutenants are not eligible for this pay.

The POST Certificate pays do not stack. An employee who receives Management Certificate Pay of five percent (5%) no longer receives the ten percent (10%) for the Advanced Certificate. The parties agree, to the extent permitted by law, the compensation in this section is special compensation and shall be reported as such pursuant to Title 2 CCR, Section 571(a)(2) Peace Officer Standard Training (POST) Certificate Pay.

## **ARTICLE 10 - TUITION REIMBURSEMENT & PROFESSIONAL DEVELOPMENT**

10.1 **TUITION REIMBURSEMENT** - Tuition and/or textbook costs required to complete job-related educational courses which are taken by an employee and which pertain directly to his or her City employment, may be reimbursed to the employee if reimbursement is recommended by the Chief of Police and approved by the Assistant City Manager. An employee requesting tuition reimbursement must obtain prior approval before enrollment per Administrative Regulation 2.1. The employee participating must achieve a passing grade of a “C” or better, Credit/No Credit or a Certificate of Completion and should see that the Human Resources Manager receives a copy, where appropriate, of the employee’s grade(s) before any reimbursement is provided.

The City will reimburse up to a maximum of \$1,250 per fiscal year for qualifying tuition, textbook costs, and/or class material costs. It is the intent of the parties that any units/degrees submitted are accredited by Western Association of Schools and Colleges (WASC, [www.wascweb.org](http://www.wascweb.org)), Council for Higher Education Accreditation (CHEA, [www.chea.org/directories](http://www.chea.org/directories)), or pre-approved by the Police Chief and Assistant City Manager.

10.2 **PROFESSIONAL DEVELOPMENT** - The City agrees to reimburse Police Captains (and effective in the pay period following City Council approval of this MOU, Police Lieutenants) up to

\$1,000 per fiscal year for activities, materials, equipment or fees that will aid in their individual professional development. The reimbursement options include: education fees that exceed the City's annual \$1,250 tuition reimbursement limit;

10.3 **TECHNOLOGY ALLOWANCE** - Effective in the pay period following City Council approval of this MOU, employees covered by this MOU shall be provided with a \$75 monthly technology allowance.

### **ARTICLE 11 - EXECUTIVE LEAVE**

11.1 Pursuant to Section 13(a)(1) of the Fair Labor Standards Act, it is mutually agreed that Police Lieutenants and Police Captains are exempt from both the minimum wage and overtime provisions of the Fair Labor Standards Act. Due to the additional hours (above their regularly scheduled 40 hours per week) that Police Lieutenants and Police Captains work, these employees will receive 80 hours of Executive Leave each calendar year. As permitted by California Labor Code section 227.3, any Executive Leave not used in the calendar year in which it is received will be lost. Executive Leave has no cash value and cannot be cashed out. The Executive Leave hours are subject to the same carry forward limitations and benefit provisions as detailed in Administrative Regulation 2.19.

### **ARTICLE 12 - AUTOMOBILE AVAILABILITY**

12.1 The City agrees that there will be automobiles available for Police Captains and Police Lieutenants within the Police Department vehicle fleet. Use of the vehicles will comply with the City's Vehicle Use Policy (Administrative Regulation 5.5) attached to this MOU as Appendix A.

### **ARTICLE 13 - SPECIALTY ASSIGNMENT PAY**

13.1 The City and Association recognize that special assignments out of the scope of the covered classifications of Police Lieutenant will at times be required for the efficient operation of the department, and therefore these special assignments and their associated specialty assignment compensation are listed below. The parties agree, to the extent permitted by law, the compensation in this section is special compensation and shall be reported as such pursuant to Title 2 California Code of Regulations, Section 571.

13.2 **UNIFORM ASSIGNMENT PAY** - Employees in the classifications of Police Lieutenant who are regularly assigned to uniform automobile/motorcycle patrol, or traffic enforcement shall receive uniform assignment pay (2.5% of base salary). Employees assigned to patrol or traffic enforcement for less than 14 consecutive days shall not be eligible for Uniform Assignment Pay.

13.3 **BILINGUAL PAY** - Applicable only to employees in the job classifications determined by the City Manager and when so assigned using their bilingual abilities as part of their regular job assignment: 5% of the top step base salary for the Senior Police Officer classification. Employees who are approved and assigned by their Chief of Police to utilize bilingual skills, which includes Spanish, Vietnamese, American Sign Language (ASL) and any other language approved by the Assistant City Manager, must be certified by the Chief of Police and may be tested by the Human Resources Division annually to verify their language proficiency in order to maintain eligibility for said compensation.

The City shall establish a second level of proficiency, designed for employees who are capable of “speaking only” and shall receive 2.5% of the top step base salary for the Senior Police Officer classification. Testing procedures will be determined and administered by the City. This level of proficiency is not intended to replace “higher” level of proficiency nor to “demote” employees currently receiving that level of benefit, providing they maintain appropriate proficiency.

A. The following standard of spoken Spanish, Vietnamese, or American Sign Language is followed for the 2.5% Certification:

1. The applicant has the ability to create with language, recombining and adapting learned material to express personal meaning and can handle simple situations and transactions in the course of his/her work such as explanation of procedures, obtaining personal information, instructions to victims and onlookers, among others.
2. The applicant is able to maintain simple face-to-face conversations, asking and answering questions regarding everyday survival on topics most related to self and immediate work environment; courtesy requirements, and personal needs during the course of routine calls not likely to be of a life or death nature.
3. The applicant can be understood with some repetition by a sympathetic native speaker.
4. The applicant demonstrates mastery of work-related vocabulary including: time, days of the week, months, family members, parts of the body, motions and states, greetings, home and community, food and beverages, alphabet and numbers, vehicles, simple commands, interrogatory words, etc.
5. Accuracy is required in the present tense and gender distinctions.
6. Core vocabulary of 300-600 words.

B. The 5% Certification requires:

1. Accuracy in present and past tenses.
2. Core vocabulary of 600-1200 words.
3. Exhibits good pronunciation, stress, and intonation skills as judged by the ability to be understood with little repetition or confusion by native speaker.
4. Ability to interview the victim of a crime or accident or other situation involving a native speaker and conduct simple interrogations and investigations which could be of a life or death nature.
5. Ability to understand description, narration, main ideas and details on a variety of topics beyond the immediate situation.

The City will continue payment of bilingual pay in the event of an industrial injury in accordance with the City's Personnel Rules and Regulations.

**ARTICLE 14 - VACATION LEAVE**

14.1 The purpose of annual vacation leave is to enable each eligible employee to spend a reasonable amount of time away from his or her job and to return to work refreshed. Any leave of absence without pay shall not accrue vacation leave for each full pay period of such absence.

14.2 Regular full-time employees in the classified services with an average work-week of forty (40) hours shall receive annual vacation with pay in accordance with the following provisions:

- A. After continuous full-time service amounting to one (1) year or more, an employee shall have earned paid vacation at the rate of ninety-two (92) working hours per year.
- B. 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 earn one hundred sixteen (116) working hours per year.
- C. 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 earn one hundred forty (140) working hours per year.
- D. 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 earn one hundred sixty-four (164) working hours per year.
- E. Upon completion of fifteen (15) years of continuous full-time service but less than twenty (20) years of continuous full-time service, such employee shall earn one hundred eighty-eight (188) working hours per year.
- F. Upon completion of twenty (20) years of continuous full-time service, such employee shall earn two hundred twelve (212) working hours per year (effective September 1, 2009).
- G. Employees shall be allowed to accrue a maximum of 424 hours of Vacation time. If an employee's vacation hours reach this maximum, his/her accrual will be frozen until such time that his/her accrual drops below the maximum. There will be no payoff for vacation hours beyond the employee's current accrual maximum.

14.3 **ACCUMULATION OF VACATION LEAVE** - Accumulation of vacation leave in excess of that earned in a calendar year is allowable upon approval of the department director as authorized by the City Manager by means of an Administrative Regulation. The current provisions of Administrative Regulation 2.22 will remain in effect until September 1, 2009.

- A. Vacation Accrual Ceiling - Effective with the pay period that begins on September 1, 2009, the accrual of vacation hours will be capped at the following maximum levels based upon an employee's years of service as follows:

<u>Years of Service</u>	<u>Annual Accrual 40-Hour</u>	<u>Maximum Accrual 40-Hour</u>
1-2	92.0	184.0
3-4	116.0	232.0
5-9	140.0	280.0
10-14	164.0	328.0

15-19	188.0	376.0
20+	212.0	424.0

Once the maximum accrual is reached, the employee will stop accruing additional Vacation Leave. Annual vacation accruals will re-commence in the next pay period following the use of vacation leave which reduces the balance below the maximum allowed. It is the responsibility of the employee to manage accrued vacation time off to not exceed the cap or maximum amount allowed per the chart above.

- B. Scheduling of Vacation Leave - It is the employee’s responsibility to request, schedule and use vacation time to avoid exceeding the maximums. However, in the event the maximum is reached, the City has the right to schedule the employee off in order to reduce the accrued hours to be within the cap.

Employees must submit vacation requests in a timely manner in accordance with the Department requirement and as appropriate for the employee’s Departmental operational needs.

Departments which have 24 hours a day/7 days a week operations have established request procedures that require significant advance notice so all vacation requests may be coordinated as fairly as possible based upon the operational needs of the Department and or Division.

- C. Departmental Needs & Exception - When an employee submits a timely vacation leave request and the Supervisor and/or the Chief of Police must deny it due to the operational needs of the City and/or Department, an exception may be granted by the Chief of Police with a written explanation from the employee’s supervisor and advance approval from the City Manager. If such an exception is granted, a cash-out of the excess, accrued vacation time in excess of the maximum amount allowed will be processed for the pay period in question. There will be no approvals for Vacation Leave Accrual beyond the Maximum Accrual Level.

Should a scheduled Vacation Leave have to be cancelled by the Chief of Police due to the operational needs of the City/Department, an exception for a “Cash-Out” may be granted by the Chief of with a written explanation from the employee’s supervisor and advance approval from the City Manager.

All employees who are at the Maximum Accrual Level or who may reach the Maximum Accrual Level shall utilize the “Cash-Out” and/or “Vacation Leave” options so as to NOT exceed the Vacation Accrual Ceiling. Other than exceptions granted based upon City and/or Departmental needs as approved by both the Department Director and the City Manager, there will no other cash-out of Vacation Leave time beyond the Maximum Accrual rates that have been established.

**14.3 VACATION LEAVE CASH OUT**

- A. Vacation Leave Cash Outs through December 31, 2018 - Employees will have the following cash-out options: 1) One eighty (80) hour cash-out any time during the fiscal year, regardless of the employee’s maximum accrual and regardless of the employee’s Vacation Leave usage; and, 2) Up to four cash-outs per fiscal year, any time during the fiscal year (irrespective of quarter), based on a “2 for 1” usage ratio, up to a maximum of

80-hours for each cash out. For example, if an employee uses 10 hours of Vacation Leave, the employee could cash out up to 20 hours of Vacation Leave; in order for an employee to cash-out the maximum of 80-hours Vacation Leave, the employee would need to use 40 hours of Vacation Leave.

All employees who are at the Maximum Accrual Level or who may reach the Maximum Accrual Level shall utilize the “Cash-Out” and/or “Vacation Leave” options so as to NOT exceed the Vacation Accrual Ceiling. Other than exceptions granted based upon City and/or Departmental needs as approved by both the Chief of Police and the City Manager, there will no other cash-out of Vacation Leave time beyond the Maximum Accrual rates that have been established.

This subsection (a) shall end on December 31, 2018.

- B. Vacation Leave Cash Out for 2019 and Thereafter - On or before the pay period which includes December 15 of each calendar year (which includes December 15, 2018), an employee may make an irrevocable election to cash out up to one hundred and twenty (120) hours of vacation leave which will be earned in the following calendar year at the employee’s base rate of pay as follows:

An employee can cash out vacation during any quarter of the following year as long as on the date(s) chosen for cash out the employee has earned at least the amount of vacation he/she chooses to cash out. In other words, employees who made an irrevocable election to cash out vacation (up to a maximum of 120 hours for the year) shall choose to be paid out during one or more of the following payroll periods:

- Payroll period which includes April 1st
- Payroll period which includes July 1st
- Payroll period which includes October 1<sup>st</sup>
- Final Payroll period of the calendar year.

Employees will notify the Human Resources Division of which quarter(s) they wish their cash outs to be paid by the payroll deadlines as set by the Finance Department and Human Resources Division. Any remaining elected vacation hours that have not been previously paid out during the year will be paid out on the final payroll period of the calendar year.

## **ARTICLE 15 - SICK LEAVE**

**15.1 ACCRUAL OF SICK LEAVE** - Employees in the Association accrue four (4) hours of sick leave per pay period into a Primary Sick Leave Bank.

**15.2 MAXIMUM ACCRUAL IN THE PRIMARY SICK LEAVE BANK** - Employees may accrue up to 480 hours of sick leave credit in a Primary Sick Leave Bank.

**15.3 OPTIONS WHEN AN EMPLOYEE REACHES THE MAXIMUM ACCRUAL OF SICK LEAVE IN THE PRIMARY SICK LEAVE BANK** - When an employee has 480 hours of sick leave in his/her Primary Sick Leave Bank, his/her pay period accrual will be distributed in the following manner:

- A. At the employee's option, one-half of the benefit will be:
  - 1. Paid as monetary compensation to the employee at the employee's then current hourly base rate of pay or,
  - 2. Converted into vacation hours. If this option is chosen, the employee cannot accrue more than the maximum vacation hours as provided in the vacation hours article of this MOU.
- B. The remaining one-half benefit will be placed in the employee's Secondary Sick Leave Bank.

15.4 **USE OF PRIMARY SICK LEAVE BANK** - Hours in this bank may be used if an employee is sick or as otherwise provided by law.

15.5 **SECONDARY SICK LEAVE BANK** - In the past, there was no cap on the accrual of sick leave. As provided above, the parties agreed to place a cap on the accrual of sick leave in the Primary Sick Leave Bank and create a Secondary Sick Leave Bank. This bank includes sick leave previously earned and as well as sick leave deposited into the bank when an employee reaches their maximum accrual in the Primary Sick Leave Bank as provided for in Article 15.1.

If an employee has a Secondary Sick Leave Bank, the first 40 hours of sick leave used per calendar year must be from this bank. Hours in this bank may also be used in the event of a verified non-industrial disability which has resulted in an absence from duty of at least 60 consecutive calendar days. In this event, sick leave in the Secondary Sick Leave Bank may be used for additional consecutive absences resulting from the disability; or it may be used to supplement LTD payments (so that the employee receives his/her full compensation) should the employee qualify for long term disability benefits. Additionally, an amount of sick leave equal to the hours used from the Primary Bank for said disability (i.e., if an employee is out for at least 60 days) may be transferred from the Secondary Bank to the Primary Bank provided that such transfer shall not result in there being in excess of 480 hours in the Primary Bank.

15.6 At the time of separation from the City, (unless terminated for cause) with a minimum of 20 years of continuous service, including if separation is by retirement (defined as having applied for retirement benefits from CalPERS), the employee shall have the option of:

- A. Being paid at his/her then current hourly rate for one-half of the sick leave accrued in both his/her Primary Sick Leave Bank, and Secondary Sick Leave Bank, or,
- B. The employee can choose to apply all credited time (both Banks) towards his or her service credit.

## **ARTICLE 16 - BEREAVEMENT LEAVE**

16.1 A maximum of three (3) days of paid leave may be used by an employee in the event of a death in his/her immediate family or the immediate family of his/her spouse. "Immediate family" is defined as grandparent, father, mother, domestic partner, brother, sister, spouse, or child. Employees are also permitted to use up to an additional two (2) days of sick leave to extend the bereavement leave up to a maximum of five (5) working days. Bereavement leave does not accumulate as it is not an accrued leave and is not carried over into a subsequent calendar year.

## **ARTICLE 17 - LONG TERM DISABILITY**

17.1 An employee is eligible for Long Term Disability (“LTD”) benefits. The premium for the Plan is paid for by each employee. Employees are eligible for benefits under the current plan for disabilities as defined by the plan and per the provisions of the plan after a 60-day elimination period. Once eligible for LTD, an employee may exercise the option of using accumulated vacation and sick leave in his or her Primary or Secondary Sick Leave Bank to supplement LTD payments up to an amount not to exceed 100% of monthly salary.

## **ARTICLE 18 - LAYOFF PROCEDURES**

18.1 Because of material change in duties or organization of the Costa Mesa Police Department, or shortage of work or funds, positions represented by the Association and covered by this MOU may be subject to lay off. Thirty (30) calendar days before the effective date of a layoff, the Chief of Police shall notify the Assistant City Manager and employee subject to layoff of the layoff decision. The City’s Personnel Rules and Regulations provide the policies and procedures related to the layoff of City employees.

## **ARTICLE 19 - DISCIPLINE**

19.1 **DISCIPLINE GENERALLY** - Represented employees are sworn employees who are covered by Public Safety Officers’ Procedural Bill of Rights Act. The provisions provided in this article are intended to comply with that law. Employees may be subject to discipline if they engage in misconduct or if they have any of the performance deficiencies which are set forth below in Article 19.5 which have not been addressed through performance management. Generally, performance based discipline will not occur unless and until the employee has been given opportunities for improvement which have not been successful. Misconduct based discipline will generally use a progressive discipline approach (i.e., using discipline to modify behavior which gets progressively more severe if there is a continuation of the misconduct). However, depending on the severity of the particular misconduct, an employee could be subject to any of the various types of discipline from a warning to dismissal.

19.2 **TYPES OF DISCIPLINE** - Represented employees are subject to the types of discipline set forth below. The Chief of Police or his/her designee shall inform an employee of any proposed discipline in writing and allow the employee a reasonable opportunity to respond to the proposed discipline before being imposed.

All proposed discipline will set forth the alleged facts upon which the discipline is based, the specific expectations of change or improvement to be demonstrated by the employee, and notice that additional discipline could be imposed against the employee in the event a change in the employee's conduct or performance does not occur.

Any written documentation regarding discipline which is imposed on the employee will be entered into the employee’s personnel file. An employee may be placed on administrative leave with pay pending pre-disciplinary procedures.

The following are the applicable types of discipline:

- A. Written Warning
- B. Written Reprimand



- C. Suspension: Unless extended by approval of the City Manager or Assistant City Manager on written recommendation of the Chief of Police, the maximum period of suspension is thirty (30) calendar days.
- D. Demotion: A demotion is defined a reduction in the employee's rank.
- E. Reduction in Pay
- F. Dismissal

19.3 **NOTICE OF PROPOSED DISCIPLINE** - Employees subject to proposed discipline will be provided with pre-deprivation procedural due process. The Notice of Proposed Discipline will set forth the alleged facts upon which the proposed discipline is based and the employee will be provided with all documents upon which the City relied in issuing the Notice. The employee will also be notified that he or she has the right to respond to the discipline either orally or in writing and the employee has the right to be represented during any meetings (by a representative of his/her choice per Government Code section 3303(i) at which the proposed discipline will be discussed with the employee. However, the right to respond is up the employee. The employee has the right not to respond if he/she chooses. However, if that occurs, if the Chief of Police or his/her designee imposes the proposed discipline it will be without the employee's input or response.

An employee's opportunity to respond to the proposed discipline is not intended to be an evidentiary hearing. It is a meeting to give the employee an opportunity to respond to the proposed discipline. If, as a result of the meeting, the Chief of Police or his/her designee determines that the information provided by the employee raises doubts as to the accuracy of the information leading to the proposed discipline further investigation may be initiated to determine if the proposed discipline is warranted.

The Chief of Police 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 other deadline for response established by the parties, the decision of the Chief of Police or designee will be transmitted in writing to the employee.

#### 19.4 **APPEAL PROCEDURES**

Employees have the right to appeal discipline which qualifies as "punitive action" under the Public Safety Officers' Procedural Bill of Rights Act ("Act"). The Parties agree to the following appeal procedures:

- A. Appeal Process for Reductions in Pay, Demotion, Suspension in Excess of 20 Hours or Dismissal

An employee desiring to appeal the Chief of Police's decision shall have ten (10) calendar days after receipt of the response to file an appeal. The employee's request for appeal must be communicated to the Assistant City Manager within the 10-day period.

If, within the 10-day appeal period, the employee involved does not file an appeal, unless good cause for the failure is shown, the action of the Chief of Police shall be considered conclusive and shall take effect as prescribed. If, within the 10-day appeal period, the employee files such notice of appeal an advisory arbitration appeal hearing shall be established as follows:

1. A list of registered arbitrators will be certified by the parties. CMPMA and the City shall each submit the names of five (5) arbitrators to complete a listing of ten (10) arbitrators. The arbitrators shall be registered with the American Arbitration Association, California State Mediation and Conciliation Service or some other agreed upon recognized reputable source. Within seven (7) calendar days of the employee's request for an arbitration appeals hearing, each party may strike three or less names from the established list. If the employee or the Association fails to strike within thirty (30) calendar days, the employee is considered to have abandoned the appeal. If a mutual agreement cannot be reached between the parties as to the selection of an arbitrator from the remaining names, the matter will be heard by the listed arbitrator who is first available to hear the matter within the time frames of the process. The party to have the first opportunity to strike a name from the list of ten arbitrators shall be determined by a coin toss.
2. The selected arbitrator shall serve as the hearing officer.
3. Where practicable, the date for a hearing shall not be less than 20 calendar days, nor more than 90 calendar days, from the date of the filing of the appeal with the Assistant City Manager. The parties may however 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 and the identity of the hearing officer to whom the matter has been assigned.
4. All hearings shall be private, however, the employee may request to open the hearing to the public.
5. Subpoenas and subpoenas duces tecum pertaining to a hearing shall be issued at the request of either party to the Hearing Officer, 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.
6. The hearing need not be conducted in accordance with technical rules relating to evidence, civil procedure 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 the 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.
7. 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 by an opposing party, 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 it is not necessary.

8. The hearing shall proceed in the following order, unless the hearing officer, for special reason, otherwise directs:
  - a. The party imposing discipline shall be permitted to make an opening statement;
  - b. The appealing employee shall then be permitted to make an opening statement;
  - c. The City shall produce the evidence on its part; the City bears the burden of proof and burden of producing evidence;
  - d. The employee appealing the disciplinary action may then open his/her defense and offer his/her evidence in support thereof. The employee bears the burden of producing evidence for any affirmative defenses asserted;
  - e. The parties may then, in order, respectively offer rebutting evidence, unless the hearing officer for good reason permits them to offer evidence upon their original case;
  - f. Closing arguments shall be permitted and written briefs may be permitted at the discretion of the hearing officer.
9. The hearing officer shall determine relevancy, weight, and credibility of testimony and evidence. He/she shall base his/her findings on a preponderance of evidence presented. During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing unless the hearing officer, in his/her discretion, for good cause, otherwise directs. 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 opinion as soon after the conclusion of the hearing as possible and in no event later than 30 days after conclusion of the hearing, absent a stipulation from the parties that a longer period of time is warranted. His/her decision shall set forth which charges, if any, are sustained and the reasons therefor. The opinion shall set forth findings of fact and conclusions.
10. 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. He/she may not recommend discipline more stringent than that issued by the Chief of Police.
11. The hearing officer's opinion and recommendation shall be filed with the City Manager or designee, with a copy sent to the appealing employee, and the Assistant City Manager 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.

12. The City Manager or designee shall then review the hearing officer's opinion and recommendation and render a decision on the appeal within thirty (30) days of the filing of the opinion and recommendation. The decision of the City Manager or designee shall be final and conclusive. Copies of the City Manager's or designee'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 or designee. A copy of said decision shall also be served upon the parties and the employee.
13. Each party shall bear the cost of its own witness and attorney fees. The costs of the hearing and the court reporter shall be shared by the parties. 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. This process may not apply to mutual settlements by the parties which result in an arbitration fee.
14. In the case of suspension, demotion, reduction in salary, or dismissal prescribed by the City Manager or designee, the time of such discipline shall relate back to the date the employee was disciplined or after delivery of the City Manager's or designee's decision if discipline was stayed pending the arbitration hearing. If the City Manager's or designee's decision results in a reduction or elimination of a loss of pay which was previously recommended by the Chief of Police, the pay loss shall be restored to the employee.
15. The provisions of Sections 1094.5 and 1094.6 of the Code of Civil Procedure shall be applicable to proceedings under this section, including the appeal of the City Manager's or designee's final determination into the California court system, which must be made in accordance with the time standards and procedures established by Section 1094.6 of California's Code of Civil Procedure.

B. Appeal Process for Lower Level Discipline

The following appeal process is established pursuant to Government Code § 3304.5.

A permanent Police Lieutenant or Police Captain shall have the right to appeal suspensions of 20 hours or less, written warnings, or written reprimands in the following manner:

1. The Police Chief shall cause to be served on the employee a statement signed by the Police Chief of the specific action against the employee. This statement shall inform the employee that he/she has the right, within five (5) working days after receipt of this notice, to request an informal hearing on the action by filing the request with the Assistant City Manager.
2. If within the five (5) day appeal period the employee involved does not file said appeal, unless good cause for the failure is shown, the action of the City shall be considered conclusive and shall take effect as prescribed.

3. If within the five (5) day appeal period the employee involved files a written notice of appeal with the Assistant City Manager a time for an appeal hearing before the City Manager or designee shall be established. The date for a hearing shall not be less than ten (10) days, nor more than thirty (30) days, from the date of the filing of the appeal, unless the parties stipulate to a different date. The employee shall be notified in writing of the date, time, and place of the hearing at least seven (7) calendar days prior to the hearing.
4. The City Manager or designee shall conduct an informal hearing on the appeal. Each party shall have the opportunity to present all relevant information in support of its respective position. These proceedings may be electronically recorded and either party shall have the right to cause them to be reported by a certified shorthand reporter at the party's expense.
  - a. If the action involves charges of misconduct, (i.e., allegations that the employee has violated one or more laws, regulations, procedures, or rules), the City shall have the burden of proving by a preponderance of the evidence the facts which form the basis for the charge of misconduct and the burden of persuasion that the punitive action was reasonable under the circumstances.
5. Within ten (10) days after the conclusion of the hearing, the City Manager or designee shall deliver to the employee a final written decision, and, which shall either: (a) affirm the decision; (b) modify it by: (1) holding that certain charges were not established by a preponderance of the evidence, and/or (2) reducing the penalty, or (3) overturn the decision in its entirety. The decision shall be final and binding on the parties and the employee, subject to their right to seek judicial review pursuant to 1094.5 and 1094.6 of the California Code of Civil Procedure.

**19.5 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. Incompetence 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 or affecting employment.
- F. Being under the influence of alcohol or intoxicating drugs while on duty without a prescription. Unauthorized use of alcohol or any intoxicating drugs while on duty, or

bringing alcohol or controlled substances onto any City work area, including work areas which are located away from the City Hall or Police Headquarters if the employee is on duty, without authorization from management.

- G. Abuse of alcoholic beverages, narcotics or any habit forming drug, in violation of the City's drug testing policy.
- H. Inexcusable absence without leave.
- I. Conviction of a felony or conviction of a misdemeanor. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony or misdemeanor 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 the Police Department.
- M. Any act or conduct undertaken which is of such a nature that it causes discredit to fall upon the City, the employee's department or division, whether during or outside of duty hours.
- N. Failure to maintain proper conduct during working hours causing discredit to the employee's department or division.
- O. Fighting, threats of bodily harm or causing an assault on a fellow worker without justification.
- P. Misuse of City records or information obtained for use outside the scope of their employment.
- Q. Falsification of City records, including the intentional omission of relevant or required information.
- R. Willful destruction of City property
- S. Abuse of sick leave.
- T. Knowingly failing to follow the procedures governing grievances when pursuing a grievance.
- U. Inattention to duty, tardiness, carelessness or negligence in the care and handling of City property, private property in their care or Departmental business.
- V. 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 so directed by his/her supervisor.
- W. Outside employment, which conflicts with the employee's position or the mission of the Department, and is not specifically authorized by the Chief of Police.
- X. Acceptance from any source of a 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. This does not include items of recognition, such as commendation, certificates and other such incidents of office which may be presented to officers in recognition of superior performance or a job well done, so long as the presentation does not include any sort of payment or compensation for the performance of the officer's duty.

- Y. Falsification of any City report or record, or of any report or record required to be, or, filed by the employee or which the employee causes to be filed.
- Z. 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.
- AA. Engaging in political activities precluded by State or Federal law.
- BB. Other acts which are incompatible with service to the public.
- CC. Violation of the City's harassment policy.

## **ARTICLE 20 - GRIEVANCE PROCEDURE**

20.1 **DEFINITION** - A "grievance" is a formal, written allegation by an employee or the Association (referred to as "grievant") that there has been a violation, misinterpretation or misapplication of this MOU and/or provisions of the Personnel Rules and Regulations. The grievance procedure is the sole and exclusive method to resolve any grievance as defined herein.

### 20.2 **PROCEDURE**

- A. **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 any discrimination against employees who may seek to resolve a grievance by invoking this procedure. Every effort should be made to find an acceptable solution at the lowest level of supervision. Within fifteen (15) calendar days after a grievant (either an employee or the Association) 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 meeting with the grievant's immediate supervisor. The supervisor shall respond with a decision within ten (10) calendar days after meeting with grievant.
- B. If the problem cannot be resolved between the employee and the supervisor, the employee may, within seven (7) calendar days from the date of receiving the answer from his/her supervisor, the grievant may request and be granted an interview with the division manager, if one exists, in order to further discuss the grievance. The division manager shall respond with a decision within ten (10) calendar days after meeting with grievant.
- C. If the grievant and the division manager cannot reach a resolution to the grievance, the employee may, within seven (7) calendar days from the date of receiving the answer from the, request, in writing, and be granted an interview with the Chief of Police within seven (7) calendar days of the grievant's request to discuss the grievance to try and reach

a resolution which is satisfactory to the grievant. The Chief of Police shall meet with the employee within seven (7) calendar days unless the date is mutually extended between the Chief and the grievant. If the grievant and Chief of Police cannot satisfactorily resolve the grievance, the Chief of Police will issue a written decision regarding the grievance within fifteen (15) calendar days after meeting with the grievant.

- D. The grievant may, within ten (10) calendar days from the date of the decision by the Chief of Police, submit a written request with the Human Resources Division requesting for advisory arbitration.
- E. A list of registered arbitrators will be certified by the Parties. CMPMA and the City shall each submit the names of five (5) arbitrators to complete a listing of ten (10) arbitrators. The arbitrators shall be registered with the American Arbitration Association, California State Mediation and Conciliation Service or some other agreed upon recognized reputable source. Within seven (7) calendar days of the employee's request for an arbitration appeals hearing, each party may strike up to three names from the established list. If the employee or CMPMA fails to strike within thirty (30) calendar days, the employee is considered to have abandoned the appeal. If a mutual agreement cannot be reached between the parties as to the selection of an arbitrator from the remaining names, the matter will be heard by the listed arbitrator who is first available to hear the matter within the time frames of the process. The party to have the first opportunity to strike a name from the list of ten arbitrators shall be determined by a coin toss.
- F. The selected arbitrator shall serve as the hearing officer.
- G. Where practicable, the date for a hearing shall not be less than 20 calendar days, nor more than 90 calendar days, from the date of the filing of the appeal with the Assistant City Manager. The parties may however 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 and the identity of the hearing officer to whom the matter has been assigned.
- H. All hearings shall be private, however, the employee may request that the hearing be open to the public.
- I. Subpoenas and subpoenas duces tecums pertaining to a hearing shall be issued at the request of either party to the Hearing Officer, 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.
- J. The hearing need not be conducted in accordance with technical rules relating to evidence, civil procedure 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 the 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.

- K. 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. 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.
  
- L. The hearing shall proceed in the following order, unless the hearing officer, for special reason, otherwise directs:
  - 1. The grievant shall be permitted to make an opening statement;
  - 2. The City's representative shall then be permitted to make an opening statement;
  - 3. The grievant shall produce the evidence on his/her part; the employee bears the burden of proof and burden of producing evidence;
  - 4. The City's representative may then open his/her defense and offer his/her evidence in support thereof;
  - 5. The parties may then, in order, respectively offer rebutting evidence, 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.
  
- M. The hearing officer shall determine relevancy, weight, and credibility of testimony and evidence. He/she shall base his/her findings on a preponderance of evidence presented. During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing unless the hearing officer, in his/her discretion, for good cause, otherwise directs. 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 opinion as soon after the conclusion of the hearing as possible and in no event later than 30 days after the conclusion of the hearing, absent a stipulation from the parties that a longer period of time is warranted. His/her advisory decision shall set forth why the grievance should or should not be sustained based on the evidence presented.
  
- N. The City Manager or designee shall then review the hearing officer's advisory opinion and recommendation and render a decision on the appeal within thirty days of the filing of said opinion and recommendation. The decision of the City Manager or designee shall be final and conclusive. Copies of the City Manager's or designee's decision, including the hearing officer's recommendation(s) shall be served upon the parties and the employee by first class mail.

- O. Each party shall bear equally the cost of facilities, fees and expenses of the hearing officer if the officer is not an employee of the City. These fees also, include the fee of the court reporter and the costs of preparing the transcripts of the hearing. Each party shall bear the cost of 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. This process shall not apply to mutual settlements by the parties, which result in an arbitration fee.
- P. If the time limits for processing the employee’s grievance at any step defined above 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. If the City Manager or designee fails to respond within the prescribed time limit, the grievance will be deemed to have been denied and the employee will be deemed to have exhausted his/her administrative remedy.
- Q. The employee and/or his/her representative may use a reasonable amount of work time as determined by the Chief of Police in presenting the grievance. However, no employee shall absent himself/herself without first being excused by the Chief of Police.
- R. Employees shall be assured freedom from reprisal for using the grievance procedures by both the City and CMPMA.
- S. The settlement terms of a grievance, which is processed by an employee individually or by the Association shall not conflict with the express provisions of this MOU
- T. 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.

**ARTICLE 21 - HOLIDAY PAY**

21.1 **DESIGNATED HOLIDAYS** - The following are the twelve (12) designated holidays:

New Year’s Day January 1 <sup>st</sup>	Independence Day 4 <sup>th</sup> of July	Day after Thanksgiving 4 <sup>th</sup> Friday in November
Martin Luther King, Jr. 3 <sup>rd</sup> Monday in January	Labor Day 1 <sup>st</sup> Monday in September	Christmas Day December 25 <sup>th</sup>
President’s Day 3 <sup>rd</sup> Monday in February	Veteran’s Day November 11 <sup>th</sup>	Floating Holiday Designated as Lincoln’s Birthday
Memorial Day Last Monday in May	Thanksgiving Day 4 <sup>th</sup> Thursday in November	Floating Holiday Designated as Admission Day

21.2 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.

21.3 Prior to the beginning of each calendar year, employees must irrevocably elect for the next year to either receive holiday leave (in which case they will receive 120 hours of holiday leave which they can use either on the actual holiday or work on the holiday and use at another time) or cash out for the holidays (in which case they will receive 96 hours of holiday pay. Employees who choose the cash out option will receive a holiday pay bank of 96 hours beginning the first pay period for the new payroll year. This holiday pay bank may be cashed out at any time during the year. At the end of the calendar year, any remaining holiday pay will be cashed out throughout the payroll year, if an employee, who has selected holiday pay, decides to take a holiday off, he/she must use either vacation or executive leave to cover their leave since he/she received holiday pay.

21.4 Employees who irrevocably elect (prior to the end of the calendar year for the following calendar year) to earn holiday leave rather than holiday pay will receive a bank of 120 hours. The hours will be available the first pay period of the new payroll year. Employees will have holiday leave available to use during the year, including (assuming if the employee requests and is approved for taking a holiday off, an actual holiday). However, employees must make a request to use holiday leave at least four (4) working days prior to the requested time off. Approval of the time off request will be based upon available staffing needs and the needs of the employee. At the end of the payroll year, any remaining hours in the holiday leave bank will be carried over to the next payroll year (however, the subsequent year's bank, shall be reduced by the number of hours carried over).

21.5 If an employee separates from the service of the City and has used or been paid for holiday pay in advance of the date(s) or day(s) the holidays actually occurred, the City will deduct the cash value for holiday benefits already paid, but unearned at the time of separation from the employee's final paycheck.

21.6 Employees hired after January 1 of each year are eligible for a pro-rata amount of holiday pay/leave during the calendar year.

## **ARTICLE 22 - UNIFORM MAINTENANCE ALLOWANCE**

22.1 The City provides uniforms or uniform allowance for employees represented by the Association. The City will continue to replace, repair and maintain uniforms worn in the line of duty. The average cost of the uniforms/uniform allowances are reported as special compensation (for those employees defined as "classic employees" by the Public Employees' Pension Reform Act of 2013 for retirement calculation purposes and is currently reported as \$17 per pay period.

22.2 Lieutenants not currently assigned to the Field Operations Division and Captains will have a complete uniform for duty wear. These Lieutenant and Captains may replace worn equipment or uniforms in the same manner as officers assigned to the Field Operations Division in addition to the \$500.00 annual clothing allowance currently paid to employees working plain-clothes assignments.

**ARTICLE 23 - SENIORITY**

23.1 Seniority is determined by length of continuous and uninterrupted service in each employee's respective classification. Seniority is used for shift selection and selection of vacation. Seniority for purposes of layoff is addressed in the Personnel Rules and Regulations.

**ARTICLE 24 - WORK SCHEDULES**

24.1 The current work schedule for Lieutenants and Captains is the four day workweek, ten hour day, (4/10). This schedule will be in effect for the duration of the M.O.U. unless mutually modified pursuant to the Meet and Confer process. Seniority based on time in grade will determine the order in which employees select their yearly work schedules.

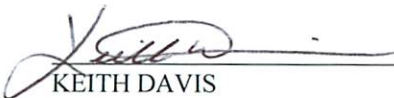
24.2 The annual selection of schedules and shifts/watch (watch synonymous with shift) for Patrol and Traffic personnel shall begin upon the completion of the rotation selection and shall conclude as soon as practical but before the January starting dates of the new shifts.

**ARTICLE 25 - PROHIBITION OF TOBACCO**

25.1 The on-duty use of tobacco in any form (cigarettes, cigars e-cigarettes ["vaping"] and related tobacco products and technologies) is prohibited for all employees in the Association.

REPRESENTATIVES OF THE COSTA MESA  
POLICE MANAGEMENT ASSOCIATION

REPRESENTATIVES OF THE  
CITY OF COSTA MESA

 1/8/19  
\_\_\_\_\_  
KEITH DAVIS Date  
Police Captain

 1/9/19  
\_\_\_\_\_  
TAMARA LETOURNEAU Date  
Assistant City Manager

 01/08/19  
\_\_\_\_\_  
BRYAN GLASS  
Police Captain

  
\_\_\_\_\_  
LANCE NAKAMOTO  
Human Resources Manager

 1-8-19  
\_\_\_\_\_  
PAUL BECKMAN  
Police Lieutenant

## VEHICLE USE POLICY

**I. Purpose:**

The purpose of this regulation is to establish and implement City policies and procedures relative to the assignment, utilization and control of City-owned vehicles as transportation for employees while engaged in official City business, to establish reimbursement procedures for privately-owned vehicles used for City business and to clarify the City's responsibility for damage and/or liability for private vehicles used on official City business.

**II. Policy:**

These regulations cover the use of City and private vehicles for conducting official City business and shall be applicable to all elected officials and employees of the City.

**III. Procedure:**

When necessary during the course of an employee's official duties, transportation or reimbursement therefore shall be provided by the City.

In the event no City vehicle is available, the employee may use his/her personal vehicle. Employees using either their own or a City-owned vehicle on official business must possess a valid California driver's license for the class of vehicle they will be operating. The transportation method utilized will be mutually agreeable to the employee and department. It is the responsibility of each Department Director to enforce the provisions of this regulation as it relates to the employees of his/her department.

City-owned vehicles shall only be used for official City business. City-owned vehicles shall not be driven to and kept at the employee's home or any location other than the regular work location or Corporation Yard, except as provided by this regulation.

City employees cannot be compelled to use their own vehicle for City business unless it is a pre-specified condition/requirement of employment.

**A. Assigned Vehicles**

1. Assigned City vehicles may be taken home by Department Directors and Division Managers as approved by the City Manager.
2. City vehicles may also be taken home by those employees who are called back on an unscheduled basis to perform official City business outside of regular working hours upon approval by the City Manager.

**B. Emergency Response Units**

1. Employees who are required to respond without delay in order to protect the public health, safety and property may take City vehicles home upon approval by the City Manager.

C. Pool Vehicles

1. Pool vehicles will be available for employees who require transportation to perform official City business but do not meet the criteria for a permanently assigned City vehicle.

D. Reimbursement for Use of Personal Vehicles

1. Executive Use

All Department Directors may, at City Manager discretion, receive the monthly automobile allowance as established.

2. Mileage Reimbursement

- a. Employees may use their own vehicles on official City business and shall be reimbursed at the established rate for mileage drive on official City business.
- b. Employees shall not be reimbursed for commuting to and from work, except that employees who are required to attend scheduled meetings outside of normal working hours may be reimbursed for mileage required.

E. Vehicle Assignment Review

During the month of December of each year, departments that have assigned City-owned vehicles to employees shall review such assignments. A report of these assignments will be prepared containing the following information:

Department and Division employee name and classification; employee address and telephone number; justification for assignment; justification for driving vehicle home (if applicable); average monthly business mileage; average monthly personal mileage (includes mileage to and from home); radio equipped (yes or no); special emergency equipment.

F. Insurance Requirements

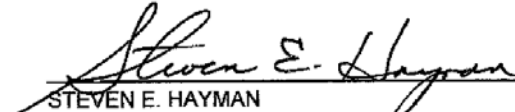
All privately owned vehicles to be used on official City business shall be insured by the individual employee. The employee's insurance coverage is deemed to be primary. It shall be the Department Director's responsibility to insure that no privately owned vehicle is operated on City business without insurance coverage and a valid operator's license as required by this regulation.

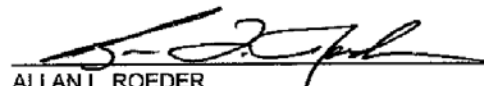
G. Clarification on City Liability

The City shall be responsible to such employee only when the employee is determined not to be negligent and the other party is uninsured. Under such circumstances, the City shall be responsible to the employee for the amount of the deductible for comprehensive and/or collision damages suffered by the employee.

IV. Effective Date:

The effective date of the Administrative Regulation is July 1, 1984 and subsequently revised July 30, 2000.

  
STEVEN E. HAYMAN  
ADMINISTRATIVE SERVICES DIRECTOR

  
ALLAN L. ROEDER  
CITY MANAGER