



# MEMORANDUM OF UNDERSTANDING

*Between The Representatives Of The  
Costa Mesa Firefighters Association  
And The City of Costa Mesa*

2004  
2007

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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, Section 3500 et. seq. of the California Government Code, the City of Costa Mesa (hereinafter called the "City") has recognized the Costa Mesa Fire Association (hereinafter called the "Association" or "CMFA") as the exclusive representative and agent for collective bargaining of the sworn members of the City of Costa Mesa Fire Department (hereinafter "Department" or "Fire Department") in the unit of representation consisting of the job classifications of Firefighter, Fire Engineer and Fire Captain, excluding all non-sworn Fire Department employees. The Association and the City are the Parties to this agreement and are jointly recognized herein as "The Parties."

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, fringe benefits and other terms and conditions of employment for the said sworn employees of the Fire Department defined in Section 1.1.

1.3 It is the mutual understanding of the City and Association that this MOU shall be submitted to the Costa Mesa City Council with the joint recommendation of the parties that the terms of this MOU be adopted and that said City Council will take such other action as may be needed to implement its provisions.

1.4 The City and the Association hereby acknowledge that the terms and conditions of this MOU may not cover all of the terms and conditions of employment applicable to a member of the unit of representation covered by this MOU. These parties further acknowledge that any term or condition of employment which is not expressly covered herein, but is 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.

1.5 The wages, hours and other terms and conditions of employment currently in effect for the job classifications covered herein shall remain in effect unless modified, amended or deleted by this MOU or subsequent MOUs, or unless a tribunal of competent jurisdiction holds that any part of this MOU is found to be insufficient, in conflict or inconsistent with other laws or contractual obligations of the Parties, or otherwise held to be invalid, unlawful or unenforceable, in which case such part or provision, and only such part or provision, shall be severed from this MOU or shall be suspended or superseded by such applicable laws and regulations. If such legal severance invalidates a benefit defined herein, said benefit shall be replaced by an item or alternative benefit of comparable value to the extent allowed by law. The Parties shall meet and confer in good faith to determine the replacement, or if any replacement is possible.

1.6 The Parties hereby agree that all of the material terms and conditions of previous MOUs are hereby superseded by the adoption of this MOU.

1.7 For the term of this MOU, neither party shall be compelled to meet and confer with the other concerning any issue within the scope of representation of the Association. Each Party to this MOU hereby expressly waives its right to demand that the other Party meet and confer concerning any issue within the scope of representation of the Association. However, nothing in this MOU shall prohibit these Parties from exploring the possibility of amending this agreement over any issue within the scope of representation of the Association, if, and only if, both Parties hereto mutually agree to do so.

1.8 Continuous uninterrupted and efficient service to the community of Costa Mesa 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 actions constituting refusal to render services, including overtime or any other curtailment or restriction of work and services at any time during the term of this MOU.

1.9 The Association recognizes its duty and obligation to comply with the provisions of Section 1.8 of this MOU and to 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 violation of the provisions of Section 1.8, the Association hereby agrees to direct its members to cease said action or conduct forthwith. No employee covered by this MOU shall be entitled to any benefits or wages whatsoever while engaged in activities prohibited by Section 1.8 of this MOU.

1.10 Except as modified by this agreement, all rights to manage, organize, direct and control the City's Fire Department are retained exclusively by the City and its management personnel.

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

2.1 **TERM** - The term of this three year MOU will commence on July 1, 2004, and will expire on June 30, 2007.

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

3.1 **COMPENSATION** - Employees covered by this Agreement shall be compensated at the established monthly base salary rates under the Basic Pay Schedule for sworn fire personnel. All positions under this Schedule shall be assigned a range number established by the City Council resolution.

3.2 **DATE OF SALARY ADJUSTMENTS** - The City will adjust the monthly base salary for members of the Association based upon the following:

First Year of the Agreement - Effective the pay period that includes July 1, 2004, the City will adjust the monthly base salary for members of the Association by the average fair wage increase, utilizing the existing total compensation calculation, less 3%. This results in an adjustment of 6.4% for the first year.

Subsequent Years of the Agreement - The City will adjust salaries based upon the total compensation calculation set forth in Section 3.5 effective with the beginning of each payperiod that includes the following dates: July 1, 2005 and July 1, 2006.

3.3 **TOTAL COMPENSATION** - CMFA agrees to meet with the City and the other employee associations from January 1, 2005 to June 1, 2005, to mutually examine the elements of "total compensation". If a new definition cannot be mutually agreed upon, the existing total compensation calculation will remain in effect.

3.4 **AFFORDABILITY** - CMFA agrees to meet with the City and other employee associations from January 1, 2005 to June 1, 2005, to mutually develop a redefinition of "affordability" that will be applied in the salary-setting process. If a new definition cannot be mutually agreed upon, the existing affordability factor will remain in effect.

3.5 **THREE PHASES** - The Parties hereby agree upon a basis of compensation which is revenue sensitive and recognizes mutual interests. The basis of compensation includes implementation of three phases:

Phase I - The City will use the average total compensation of the benchmark survey agencies for top step Firefighter (Fountain Valley, Huntington Beach, Newport Beach, Santa Ana, and the Orange

County Fire Authority) to determine a fair wage. It is agreed that the average will be defined as the average of the five survey agencies previously listed, excluding the City of Costa Mesa.

Total compensation shall be defined as mutually agreed upon through the process defined in Section 3.3. However, if a revised definition cannot be mutually agreed upon, the existing definition of total compensation calculation will remain in effect. The existing definition includes top step base salary, employer-paid benefits or employer contributions to employee benefit plans, including: member retirement contribution, medical, dental, life, long-term disability, and post retirement medical program. Total compensation shall also include exposure pay (Fountain Valley) as well as any other form of compensation which can be shown to be paid to any of the benchmark agencies on a classification wide basis. In addition, total compensation shall include the value of any enhanced retirement formula provided to comparable employees in any of the agencies identified in the formula, including Costa Mesa. The value of the enhancement will be determined by ascertaining the percentage increase in employer retirement contributions that would result in Costa Mesa if it implemented the same PERS benefit and multiplying it by the portion of the total compensation included in the formula that was subject to retirement contributions, irrespective of the actual cost or increase in retirement contribution rates for any agency implementing the formula. The City will use the PERS 3% at 55 actuarial value for the Fire Safety Plan split rate in the total compensation calculation. The City will use the 3% at 50 actuarial value from the same Fire Safety Plan split rate quotation in the total compensation calculation for other agencies in the marketplace if that benefit is implemented by that agency. One month prior to each adjustment effective date, available compensation and benefit data for the comparison agencies regarding negotiated adjustments and tentative agreements pending ratification that are defined or ascertainable that will be implemented within six months and two weeks of the adjustment effective date, will be used in computing total compensation. For example, for the July 1, 2005 adjustment, available compensation data for the comparison agencies regarding negotiated adjustments and tentative agreements pending ratification that will be implemented prior to the third week of January 2005 will be used in computing total compensation. If a negotiated adjustment or tentative agreement provides for an adjustment within the applicable timeframe based upon a formula with a guaranteed minimum increase, that guaranteed minimum increase shall be factored into these calculations. For example, if one of the survey agencies makes a contractual commitment to cause the base salaries of comparable employees to be at least the fifth highest in the County of Orange, the guaranteed minimum increase shall be the increase necessary to cause those salaries to be the fifth highest at the time of the measurement date.

Phase II - Affordability shall be defined as mutually agreed upon through the process defined in Section 3.4. However, if a revised definition cannot be mutually agreed upon, the existing affordability factor will remain in effect as follows: The City will use the most recent Chapman University Economic and Business Review/Forecast Update Report and the most recent Department of Labor's Consumer Price Index (CPI) to determine affordability. The Orange County economic indicators from the Chapman Report shall be limited to Orange County Variables - Annual History and Forecasts Year-to-Year Percentage Changes include: Total Payroll Employment, Total Taxable Sales from the previous year end (estimated actuals). The Department of Labor's most recent actual Consumer Price Index for the Los Angeles-Anaheim-Riverside region will also be used. The actual calculation is as follows: add Total Payroll Employment, to Total Taxable Sales, and subtract Consumer Price Index, and the result is the affordability index.

Phase III – For the second year of the agreement, the City will adjust salaries utilizing a revised total compensation calculation and/or a revised definition of affordability. The adjustment will be the greater of: 1) the average fair wage increase less 2%, or 2) affordability. For the third year of the agreement, the City will adjust salaries utilizing the revised total compensation calculation and/or the revised definition of affordability. The adjustment will be the greater of: 1) the average fair wage increase, or 2) affordability. The salary adjustments will be implemented for the benchmark class of Firefighter and applied equally to Fire Engineer and Fire Captain.

3.6 **MANDATORY DIRECT DEPOSIT** – All association employees will be required to enroll in payroll direct deposit. Paychecks will be electronically paid to an employee’s bank account. Upon separation, employees will be paid with a physical paycheck that will be held in Personnel. In the event an employee does not choose to participate in the Direct Deposit Program, the paycheck will be mailed to the employee’s mailing address on payday Friday.

#### **ARTICLE 4 - PROMOTIONS**

4.1 **RATE OF PAY** -Current administrative regulations provide that when an employee is promoted that the promotee shall be placed at a step within the appropriate salary range for the new classification that pays at least 5% higher than the rate of pay earned prior to the promotion, provided that the promotee's new rate of compensation does not exceed the top step of the new position's appropriate salary range. In making this determination, “the rate of pay earned prior to the promotion” shall include any paramedic assignment payments to any Firefighter who is receiving such assignment pay and who is promoted to Fire Engineer.

#### **ARTICLE 5 - HEALTH INSURANCE**

5.1 **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. Core benefits include life and long term disability insurance. Medical insurance is a required core benefit which a City employee is required to carry if a City employee is not covered by another medical insurance plan with comparable coverage at the end of the open enrollment period.

5.2 **PEMHCA** -Employees shall have the option of choosing medical coverage under the Public Employees’ Medical Health Care Act (PEMHCA).

5.3 **CONTRIBUTION AMOUNT** –The City’s contribution for 2005, 2006 and 2007 is \$501 per month towards each employee’s flexible benefit account.

5.4 **MEDICAL PLAN WAIVER** –In 2005, there will be a \$48.40 per month reduction in the monthly contribution for those employees who are covered under a spouse’s or another medical insurance plan and voluntarily elect to waive medical insurance. In 2006, the contribution will be \$64.60 per month. In 2007, the contribution will be \$80.80 per month. This amount will be deducted from the City’s contribution toward the employee’s flexible benefit account. An employee who does not use the entire allocated flexible benefit contribution amount to pay mandatory and optional insurance premiums shall receive a cash payment equal to the unused portion.

5.5 **QUALIFICATION FOR FLEX CONTRIBUTION** - Employees must receive compensation for the entire payperiod 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 payperiod. Catastrophic illness leave donations to employees will not meet the qualifications for the flex contribution. Disciplinary actions will not disqualify an employee from receiving the flex contribution. This provision shall not apply to a payperiod during which an employee has exhausted all paid leave benefits. Its application shall take effect the following payperiod.

#### **ARTICLE 6 - RETIREMENT**

6.1 **CALPERS** -The California Public Employees’ Retirement System (CalPERS) Local Safety Plan provides retirement benefits to eligible CMFA safety employees under the 3% at 55 formula (Section 21363.1) . The City shall pay the employees’ required retirement contribution to CalPERS (the Employer-Paid Member Contribution is 9% of compensation earnable) and this amount shall be added to the base salary

as defined in Article 2.1 for retirement calculation purposes (i.e. calculation of final compensation). The City's payment of the employees' required retirement contribution to CalPERS shall be reported to CalPERS as "compensation earnable" in accordance with Section 20636(c)(4) of the California Government Code.

6.2 The PERS 3% at 55 public safety retirement benefit is in effect. The added cost to the City for this retirement enhancement will affect subsequent total compensation calculations as described in Section 3.3.

6.3 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 fire safety employees includes the following options:

- Section 20042 (One Year Final Compensation)
- Section 20965 (Credit for Unused Sick Leave)
- Sections 21624/21626 (Post-Retirement Survivor Allowance)
- Section 21620 (Retired Death Benefit of \$500)
- Section 21329 (COLA of 2%)
- Section 20903 (Two Years Additional Service – Golden Handshake)
- Section 21031 (Purchase of Prior Service Credit)
- 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 21427 (Disability Retirement - Maximum 50% of Final Compensation)

## **ARTICLE 7 - RETIREE MEDICAL PROGRAMS**

7.1 **RETIRED EMPLOYEES' MEDICAL PROGRAM** – The City shall continue to provide life and medical insurance for retired employees of the City as defined in Council Policy 300-1 (Appendix D). Employees hired after January 1, 2004 will participate in the mandatory Retirement Health Savings defined contribution plan and are not eligible for the Retired Employees' Medical Program. The purpose of the *Defined Contribution Retirement Health Savings Plan* (Plan) is to establish a tax protected savings program for every full-time employee that will:

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

The program will require mandatory participation by all full-time employees. Employees will make a monthly contribution to the plan equal to 1% of their base monthly salary, which will be matched by a 1% salary monthly contribution from the City into employees' accounts. The account assets that accumulate, 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. Employee contributions plus vested employer contributions will be portable if an employee should leave employment with Costa Mesa prior to retirement.

7.2 **CMFA POST RETIREMENT MEDICAL BENEFIT TRUST** - The City contributes to the CMFA Post Retirement Medical Benefit Trust \$26.77 per pay period for each member of the Association. The City includes this amount in the total compensation calculation defined in Article 3.3. The Parties hereby agree that this contribution to the CMFA Post Retirement Medical Benefit Trust is the only obligation or duty that the City has with respect to this Post Retirement Medical Trust and that the \$26.77 per payperiod

employer contribution will remain fixed throughout the term of this agreement. Further, the Parties express their intent that the documents controlling said Post Retirement Medical Trust be amended or modified, if necessary, to clearly state that the City has no obligation or duty with respect to the determination, payment, denial, appeal, administration of benefits under said plan, or the operation of any aspect of said plan.

#### **ARTICLE 8 - HOLIDAY PAY BANK**

8.1 **CASH PAYMENT** - At the end of any pay period during the calendar year, employees may elect to receive a cash payment for earned holiday benefits up to a maximum of 134.4 hours per calendar year. Employees hired after January 1 of each year are eligible for holiday pay on a pro rata basis during the calendar year based on the established City holiday schedule. If an employee separates from the service of the City and has 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 the holiday benefits paid, but unearned at the time of separation from the employee's final paycheck.

8.2 **ADDITIONAL HOLIDAY** – If the City provides an additional holiday to any other employee group during the term of this contract, the City will also provide the cash value of that additional holiday to the members of CMFA.

#### **ARTICLE 9 - BILINGUAL PAY**

9.1 **BILINGUAL CERTIFICATION** - Bilingual pay for members of the Association will be 5% or 2.5% of the top step base salary for the Fire Engineer classification and shall be paid in addition to all other compensation to those sworn personnel who are certified as bilingual. Employees currently compensated above the 5% rate will be “grandfathered” until recertification. Fire Administration (Management Analyst, Administrative Captain) will keep records of the individuals who elect to receive bilingual training and those who receive bilingual pay. The City will pay for bilingual training or for the bilingual skill, but not both. Employees may be tested by the Personnel Division annually as to their language proficiency in order to maintain eligibility for bilingual pay. The City will pay for one test per year per employee. An employee may take the test more than once during the calendar year at his/her own expense.

9.2 **SECOND LEVEL OF PROFICIENCY** - There is a second level of proficiency, designed for employees who are capable of “speaking only” and who shall receive 2.5% of top step Fire Engineer salary. Testing procedures will be determined and administered by the City. This level of proficiency is not intended to replace the “higher” 5% level of proficiency or to “demote” employees currently receiving that level of benefit providing they maintain appropriate proficiency.

9.3 **QUALIFICATION FOR 2.5% CERTIFICATION** - The following standard of spoken Spanish or Vietnamese is followed for the 2 ½% Certification:

- a. 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 paramedic calls, explanation of procedures, obtaining personal information, symptoms and health history, instructions to victims and onlookers, among others.
- b. 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.
- c. The applicant can be understood with some repetition by a sympathetic native speaker.
- d. 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.

- e. Accuracy is required in the present tense and gender distinctions.
- f. Core vocabulary of 300-600 words.

9.4 **QUALIFICATIONS FOR 5% CERTIFICATION** - In addition to Article 9.3 above, the 5% Certification requires:

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

#### **ARTICLE 10 - LEAVE REPLACEMENT AND OVERTIME PAY**

10.1 **OVERTIME COMPENSATION** - If an employee is required to work longer than the normal work week or work shift with the authorization of his or her superior, then said employee shall be compensated for the overtime that has actually been worked and approved by the department director. Compensation for said approved overtime shall be by payment at the rate of one and one-half (1-1/2) times the employee's regular hourly rate for each hour of overtime worked.

10.2 **OVERTIME CATEGORIES** - Overtime will be broken into two separate categories; (A.) "leave replacement" and (B.) regular overtime.

10.3 **CALL-BACK** - Anytime an off duty employee is required to report for duty for staffing level requirements, emergencies, disasters, fire investigation responsibilities, or other department-related needs, that employee shall receive a minimum of two (2) hours at one and a half times the employee's base salary rate. This does not apply to early reporting or "hold-overs".

#### **ARTICLE 11 - STAFFING LEVELS**

11.1 **MINIMUM STAFFING** - The minimum daily staffing level will be 31 not including Battalion Chief, for fire suppression and emergency medical services. If however, because of a vacancy or absence, the staffing number drops below the minimum, during periods of twelve (12) hours or more, then the Department will make every effort to hire back, rank-for-rank, to minimum levels. For absences of less than twelve (12) hours, the Battalion Chief shall have the discretion to decide whether or not to fill the vacancy and if he/she does, with qualified, capable and/or willing on-duty personnel.

#### **ARTICLE 12 - BENEFIT REVIEW COMMITTEE**

12.1 **BENEFIT REVIEW COMMITTEE** – CMFA shall maintain two representatives 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. Participation on the Benefit Review Committee meets the City's obligation to negotiate with CMFA on changes to the City's group benefit plans unless CMFA determines that such changes are detrimental to the interest of its members.

### **ARTICLE 13 - LABOR/MANAGEMENT MEETINGS**

13.1 **TWICE PER YEAR** - The City and CMFA agree to meet not more than twice in a calendar year to discuss issues of mutual interest.

### **ARTICLE 14 - HOURS POOL RECONCILIATION**

14.1 **PARAMEDIC TRAINING HOURS** - The City agrees to eliminate past, present and future paramedic training hours from the Fire Department's hour pool calculations.

14.2 **ZEROING OF HOURS** - The Association agrees to the current status of the hours pool figures upon verification and acknowledges its obligation and responsibility in maintaining accurate reporting and documentation. The zeroing of the hours pool shall occur annually from the members' vacation bank hours. This zeroing shall occur at the end of the pay period closest to July 1, in which all three (3) shifts normally reach zero.

### **ARTICLE 15 - TUITION REIMBURSEMENT**

15.1 **PASSING GRADE** - Tuition, certification fees, and textbook costs involved in educational courses which may be taken by an employee and which pertain to his/her City employment, shall be reimbursed to said employee by the City. The employee participating must achieve a passing grade and should see that the Personnel Officer receives a copy, where appropriate, of the employee's grade(s) before any reimbursement.

15.2 **REIMBURSEMENT AMOUNT** - The City will reimburse up to a maximum of \$1,000 per fiscal year for qualifying expenses.

15.3 **ELIGIBLE CLASSES** - Eligible classes that pertain to an individual's City employment will include those that are job-related or those needed to complete a degree program. All courses or seminars related to any of the approved categories in the Certification Program are eligible for reimbursement.

15.4 **REQUIRED APPROVAL** - All claims for tuition reimbursement require the approval of Fire Administration before receiving the funds.

### **ARTICLE 16 - PARAMEDIC ASSIGNMENT PAY & RECERTIFICATION**

16.1 **AMOUNT OF PARAMEDIC PAY** - Applicable to Fire Department personnel when assigned to the Mobile Intensive Care Division as follows:

- 10.00% above the monthly pay step of Firefighter when first assigned
- 11.25% above the monthly pay step of Firefighter after the first license renewal as a City employee
- 12.50% above the monthly pay step of Firefighter after the second license renewal as a City employee
- 13.75% above the monthly pay step of Firefighter after the third license renewal as a City employee

16.2 **STATE MANDATED CHANGE** - Any employee receiving Paramedic certification pay will not be adversely affected should the State mandate a change in the duration of the license renewal period. Paramedics will receive the same incremental increases for license renewals.

16.3 **BONUS** - The City will pay a \$500 bonus for the fourth and subsequent license renewal.

**ARTICLE 17 - FIRE ADMINISTRATION ASSIGNMENT**

17.1 **PAY FOR ASSIGNMENT** - Any employees in the job classification of Firefighter, Fire Engineer and Fire Captain shall be entitled to compensation in the amount of 10% over the assigned rate for his or her classification when permanently assigned by the Fire Chief to a 40-hour administrative assignment workweek.

**ARTICLE 18 - ASSOCIATION VACATION BANK**

18.1 **CMFA HOURS BANK** - The City agrees to maintain a vacation bank to be administered by the CMFA Board of Directors. The bank will be comprised of hours voluntarily donated by Association members.

**ARTICLE 19 - SICK LEAVE INCENTIVE PROGRAM**

19.1 **ACCUMULATION LIMITS** - Employees may accumulate up to a maximum of 672 hours of sick leave credit in a Primary Sick Leave Bank for each employee covered hereunder. Upon reaching this maximum number of accumulated sick leave hours, the employee's biweekly benefit of 5.17 hours will be distributed in the following manner:

- a. At the employee's option, one-half of the benefit will be:
  - 1. Paid to the employee at the employee's then current hourly base rate of pay.

OR

- 2. Converted into vacation hours.
- b. The remaining one-half benefit will be placed in a Secondary Sick Leave Bank for the employee.

19.2 **PRIMARY SICK LEAVE BANK** - Hours in this bank may be used in accordance with the rules regarding sick leave use in general as defined in the City's Personnel Rules and Regulations..

19.3 **SECONDARY SICK LEAVE BANK** – If an employee has a Secondary Sick Leave Bank, hours in that bank will be used first in accordance with the rules regarding sick leave use. Hours in this bank may also be used in the event of a verified non-industrial disability which has resulted in an absence of 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 should that event occur. Additionally, an amount of sick leave equal to the hours used from an employee's Primary Bank for said disability may be transferred from the employee's secondary Bank to the Primary, provided that such transfer does not result in an excess of 672 hours in the employee's Primary Bank.

19.4 **SEPARATION FROM CITY** -Upon either separation from the City of Costa Mesa, with a minimum of 20 years of continuous honorable service; or eligibility for retirement benefits, (as defined in the benefit Plan applied for) the employee shall have the option of:

- a. Being paid at his/her current hourly base rate for one-half of the sick leave in his/her Primary Sick Leave Bank. There shall be no cash payment for sick leave in the Secondary Sick Leave Bank, or
- b. Alternatively, the employee can choose to apply all credited time in both his or her Primary and Secondary Sick Leave Banks toward service credit. In addition, if this alternative is selected, then the payoff indicated in 19.4a above becomes a survivor benefit, to be paid to his/her designated beneficiary.

**ARTICLE 20 - LONG TERM DISABILITY**

20.1 **ELIGIBILITY** - An employee is eligible for Long Term Disability (LTD) after sixty (60) calendar days. Once eligible for LTD pursuant to the terms and conditions of the LTD Plan, an employee may exercise the option of using accumulated vacation and sick leave in his or her Primary and Secondary Sick Leave Bank to supplement LTD payments up to an amount not to exceed 100% of monthly salary.

20.2 **MEDICAL RETIREMENT** - A permanent separation from service for disability shall be termed a "medical retirement" whether or not such separated employee receives benefits from either the Retirement Plan or LTD Plan.

**ARTICLE 21 - CERTIFICATION PROGRAM**

21.1 **ELIGIBILITY** -Employees employed in the classifications of Firefighter, Fire Engineer and Fire Captain will be eligible to participate in the Certification Program based upon the following achievements and criteria:

<b>CLASSIFICATION</b>	<b>CERTIFICATION/DEGREE</b>	<b>MONTHLY AWARD</b>
<b>FIREFIGHTER FIRE ENGINEER FIRE CAPTAIN</b>	Investigator II	\$60
	Instructor II	\$60
	Instructor III	\$60
	Prevention Officer II	\$60
	Prevention Officer III	\$60
	Public Education Officer	\$60
	Driver/Operator I	\$60
	Rescue Specialist	\$60
	<i>Rescue Systems I</i>	
	<i>Rescue Systems II</i>	
	Confined Space Operational Tech	\$60
	<i>Confined Space Operational</i>	
	<i>Trench Shoring</i>	
	Specialized Rescue Technician	\$60
	<i>Vehicle Extrication</i>	
<i>Swift Water Operational Technician</i>		
<i>Haz Mat First Responder</i>		
<i>ICS-200</i>		
Firefighter II	\$60	
Fire Officer Certification	\$120	
Chief Officer (Captains Only)	\$120	
<b>ALL CLASSIFICATIONS</b>	60 units or AS/AA Degree	\$120
	120 units or BS/BA Degree	\$180
	180 units or MS/MA Degree	\$180

**CRITERIA**

1. The awards employees will be eligible to obtain shall be cumulative, provided the total maximum monthly award payable to any employee shall not exceed \$500 per month.

2. The parties recognize that this program needs to be reviewed and updated on a periodic basis to ensure its vitality and relevance.
3. Employees who possess a certification for a promotional classification are eligible for move-up assignments and pay.
4. Fire Administration will be responsible for notifying the Personnel Division of the award qualification, upon verification that an employee has met the required criteria.
5. Employees must submit official documentation/transcripts to Fire Administration confirming that he or she is in possession of the required certifications and degrees prior to receiving an award.
6. These awards shall be reported to PERS as "compensation earnable."

#### **ARTICLE 22 - LONGEVITY PAY**

22.1 **PROGRAM DEMISE** -The Longevity Pay Program shall be frozen effective July 1, 1997.

#### **ARTICLE 23 -LAYOFF PROCEDURES**

23.1 **THIRTY (30) CALENDAR DAYS** - In the event of a material change in the duties, mission or organization of the Costa Mesa Fire Department, or if a shortage of work or funds to operate the Fire Department develops, employees in the classified service may be laid off. Thirty (30) calendar days before the effective date of such a layoff, the appointing authority shall notify the Personnel Officer of the intended layoff, identifying any employee to be laid off and articulate the reasons therefore. Said employee shall be considered for re-employment as provided by the Personnel Rules and Regulations.

#### **ARTICLE 24 - LEAVES OF ABSENCE**

24.1 **LEAVES OF ABSENCE ENTITLEMENT**- 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.

24.2 **VACATIONS** - The purpose of annual vacation leave is to enable each eligible employee annually to return to his/her work mentally refreshed. Any leave of absence without pay shall not accrue vacation leave for each full pay period of such absence.

- A. Regular full-time employees in the classified service with an average work-week of fifty-six (56) hours shall accrue 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.
6. The hours set forth herein are intended to provide equal proportion of vacation for hours worked for all City employees.

B. **VACATION LEAVE** – Vacation will be used in accordance with current accepted Fire Department procedures.

C. **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.

D. **SICK LEAVE 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.

24.3 **SICK LEAVE** - 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 his or her child, parent, or spouse 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 for illness is for more than two (2) consecutive work shifts, the employee may be required to present a physician's certificate verifying the illness or a personal letter of explanation for verification purposes to the on-duty Battalion Chief indicating fitness to return to duty. The Battalion Chief shall then forward the certificate or verification to Fire Administration.

A. **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. The remaining one-half (1/2) accumulation shall be credited to the secondary sick leave bank.

24.4 **REMOVAL OF LIMITATION** - The City agrees to remove in the Personnel Rules and Regulations the City's limitation of sick leave usage to just the "employee's immediate household".

24.5 **BEREAVEMENT LEAVE** - Whenever an employee who is compelled to be absent from duty by reason of a death or critical illness where death appears imminent of father, mother, grandfather, grandmother, brother, sister, wife, husband, or child of employee or spouse, such employee shall, upon approval of his/her department director, be entitled to charge such absence as "bereavement leave" to a maximum of three (3) consecutive work shifts days per occurrence. Any additional time that may be required would be charged to sick leave. The City Manager, upon written request, may grant bereavement leave for persons other than heretofore listed. Effective January 1, 2005, the definition of bereavement leave will include an employee's domestic partner.

24.6 **LEAVE OF ABSENCE WITHOUT PAY** – All paid leave must be exhausted prior to being granted leave without pay unless the employee is concurrently on a Family Care and Medical Leave or has

reached the threshold for LTD eligibility. All paid leave must be exhausted prior to an employee being able to use catastrophic illness leave donations. Employees will not receive additional leave accruals while using catastrophic illness leave donations.

## ARTICLE 25 - FITNESS ANALYSIS TESTING

**25.1 MANDATORY TESTING** - The City has a mandatory testing program for all employees represented by the Association with the exception of those members that may be on modified duty or are excused for medical reasons. Personnel on modified duty or excused for medical purposes shall be required to submit to the testing as soon as they are released to full duty. Failure to submit to the testing will be considered a failure. All members will be required to choose which of the below two options they will be participating in for that calendar year at a predetermined date. A member will not be allowed to change their selection until the following year.

Option One – Participate in the Santa Ana College Fitness Analysis: When a member chooses this option, he/she must pass the treadmill component with a minimum time of 10 minutes. Any member falling below the standard will immediately be subject to the provisions for test failure set forth below in Section 25.7.

Option Two - Participate in the Santa Ana College Physical Abilities Test: When a member chooses this option, he/she must complete the abilities test within 12 minutes. Any member with a time greater than 12 minutes will immediately be subject to the provisions for test failure set forth below in Section 25.7.

In cases where Santa Ana College refuses to test an employee, a letter from a testing facility/physician stating that the employee completed the required evaluation or test at a passing percentage for the physical fitness evaluation will be the required method of documentation.

**25.2 PROGRESS TRACKED** -The company officers, or a member designated by Fire Administration, shall track the progress of each member of his/her crew. Battalion Chiefs, or a member designated by Fire Administration, shall document the progress of each Captain under their command. Information regarding performance should be noted in annual performance reviews.

**25.3 DOCUMENTATION METHOD** - A letter from the testing facility stating that the member completed the evaluation or test at a certain percent for the physical fitness evaluation will be the method of documentation. No other information from the member shall be required by the City as proof.

**25.4 START DATE** - January 1 of each year will be the start date for that year's program.

**25.5 CITY COST**- The City will pay for the cost of options one and two, and whenever operationally feasible, provide time on duty to be tested. If the member elects to be tested off-duty, the member will not be paid overtime for that time.

**25.6 WORKERS' COMP** - The City will provide worker's compensation coverage for all on-duty and off-duty testing.

**25.7 TEST FAILURE** - The City proposes the following process for failure of the Santa Ana College Fitness Analysis or Physical Ability Test:

First Failure - After the first failure, an expert in exercise (possibly an exercise physiologist) will design a six-month mandatory program to assist the individual in successfully attaining the minimum standard. A Captain or Battalion Chief will supervise this exercise program.

Second Failure - After the second consecutive failure, there will be another six-month mandatory

supervised period.

Third Failure - After the third consecutive failure of the Santa Ana College Fitness Analysis or Physical Abilities test, the employee will be sent for a medical Fitness for Duty Exam paid by the City. Should the employee pass the Fitness for Duty Exam, the employee will continue in the mandatory supervised program for that year until such time that the employee passes the Santa Ana College Fitness Analysis or Physical Ability Test. Employees in this third situation will only be required to test on an annual basis. If the employee does not pass the Medical Fitness for Duty, the appropriate process will be initiated.

## **ARTICLE 26 - DISABILITY DISCRIMINATION**

26.1 **DISCRIMINATION AVOIDANCE** - Because the Americans with Disabilities Act (“ADA”) and the California Fair Employment and Housing Act (“FEHA”) requires accommodations for individuals protected under the ADA, and because these accommodations must be determined on an individual case-by-case basis, the parties agree that the provisions of this agreement may be disregarded in order for the City to avoid discrimination under ADA or FEHA relative to hiring, promotion, granting permanency, promotions, transfer, layoff, reassignment, termination, rehire, rates of pay, job and duty classification, seniority, leaves, fringe benefits, training opportunities, hours of work or other terms and privileges of employment.

26.2 **INTERACTIVE PARTICIPATION** - The Association recognizes that the City has the legal obligation to meet with the individual employee to be accommodated before any adjustment is made in working conditions. The Association will be notified of any proposed accommodations prior to implementation..

26.3 **PAST PRACTICE** - Any accommodation provided to an individual protected by the ADA or the FEHA, which are pursuant to ADA or FEHA, shall not establish a past practice, nor be cited or used as evidence of a past practice in any grievance/arbitration procedure.

## **ARTICLE 27 - COMPUTER AND INTERNET USE**

27.1 **CITY POLICY** - Members of the Association agree to adhere to the City’s Computer Use and Internet Authorization Policies. The City will continue to maintain an Intranet bulletin board for Association use.

27.2 **PUBLIC SAFETY SYSTEM** - The Fire Department will establish its own procedures and policy for employee use of the Public Safety System.

27.3 **ASSOCIATION-PAID LINES** - The City agrees that Association-paid phone lines, cable lines or other means paid for by the Association in fire stations can be used by members to gain Internet access with the understanding that such usage will be in a responsible, ethical and legal manner.

## **ARTICLE 28 - DRUG TESTING FOR FIRE ENGINEERS**

28.1 **REASONABLE SUSPICION** - The City will conduct reasonable suspicion drug testing for Fire Engineers and random testing for entry-level probationary employees. (See Appendix A)

## **ARTICLE 29 - GRIEVANCE PROCEDURES**

29.1 **SUPERCEDE RULES AND REGULATIONS** -The following guidelines supersede Sections 3 and 4 of Rule 25, Grievance Procedure, of the City's Personnel Rules and Regulations.

29.2 Definition - A "grievance" is a formal, written allegation by an aggrieved employee or the Costa Mesa Firefighters' Association that an employee has been adversely affected in the terms and conditions of his or her employment by violation, misinterpretation or misapplication of the specific provisions of the Memorandum of Understanding, department rules, standard operating procedures and/or provisions of the Personnel Rules and Regulations. 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.

### 29.3 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 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.
- b. The supervisor must respond with the answer within (14) calendar days of the meeting.
- c. If the supervisor's response does not result in an acceptable solution, the grievant and/or the Association may exercise its right to either proceed with the steps in this Grievance Procedure or waive the additional grievance steps and institute judicial proceedings.
- d. Within fourteen (14) 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 discuss the grievance further.
- e. The division manager must respond with the answer within (14) calendar days of the meeting. Within seven (7) calendar days from the date of receiving the answer from the division manager, the grievant may request, in writing, and be granted an interview with the department director.
- f. The department director shall render his/her decision in writing within fifteen (15) calendar days of receiving the grievance. If the department director and employee are unable to arrive at a satisfactory solution, the employee may, within ten (10) calendar days from the date of the decision by the department director, submit a written request with the City Manager or Assistant City Manager.
- g. The City Manager or Assistant City Manager shall review the grievance and respond to the employee within twenty (20) calendar days of receiving the appeal. The City Manager or Assistant 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.
- h. If the time limits for further processing the employees' 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 Assistant City Manager 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.
- i. 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.

- j. The employee and/or his/her representative may use a reasonable amount of work time as determined by the appropriate supervisor or department director in presenting the appeal. However, no employee shall absent himself/herself without first being excused by his/her supervisor.
- k. No employee shall be required to be represented by an employee organization in processing a grievance.
- l. Employees shall be assured freedom from reprisal for using the grievance procedures by both the City and the employee organization.
- m. The settlement terms of a grievance that 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.
- n. 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 that 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.
- o. In the case of an alleged contract violation where the Association has been unsuccessful in its attempts to resolve the matter with authorized representatives of the City, the Association may exercise its right to institute judicial proceedings, and its failure to pursue this grievance procedure shall not be regarded as a failure to exhaust administrative remedies

### **ARTICLE 30 - DISCIPLINARY PROCEDURES**

30.1 **SUPERCEDE RULES AND REGULATIONS** - Any conflict or discrepancy between this Article and Rule 26 of the Personnel Rules and Regulations shall be clarified in accordance with this Article.

30.2 **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. 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 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. Outside employment which conflicts with the employee's position and is not specifically authorized by the department head.
- r. 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.
- s. Falsification of any City report or record, or of any report or record required to be, or, filed by the employee.
- t. 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.
- u. Political activities precluded by Local, State or Federal law.
- v. Other acts which are incompatible with service to the public.

30.3 Types of Discipline - The following procedures shall be followed when, in the judgment of the department director, an employee has committed an act or omission that justifies disciplinary action. Except for written warnings/reprimands, the department director or his/her designee shall advise employees

of contemplated disciplinary actions in writing and allow the employee reasonable 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 that in the discretion of the appointing authority, an employee may be placed on administrative leave with pay pending predisciplinary procedures. The Administrative Services Director must be contacted immediately.

- a. **Warning/Reprimand:** If the warning/reprimand is in writing, the department director shall give the employee a copy and forward a copy to the Administrative Services 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 or improvement to be demonstrated 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 to this warning/reprimand.
- b. **Suspension:** A department director may suspend an employee with or without pay from his/her position. The appointing authority shall advise the Administrative Services Director in writing of such intended action and shall give a copy of such statement to the employee. The written statement shall be accompanied by copies of all materials relating to the subject of the proposed discipline and shall contain a description of the events which necessitated the suspension, a statement of the charges, 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 or Assistant City Manager on written recommendation of the department director, the maximum period of suspension shall be thirty (30) calendar days.
- c. **Demotion or Reduction in Pay:** A department director shall advise the Administrative Services 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 director 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 Administrative Services Director for review and retention in the employee's personal history file. The written statement shall be accompanied by copies of all materials relating to the subject of the proposed discipline and shall contain a description of the events which necessitated the demotion, a statement of the charges, 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 possible further action in the event a change or improvement by the employee does not occur.
- d. **Dismissal:** A department director shall advise the Administrative Services Director in writing of his/her intention to dismiss an employee before taking such action. In dismissing an employee, the department director shall make a written notice and shall give a copy of said notice of dismissal to the employee and forward a copy to the Administrative Services Director for review and retention in the employee's personal history file. The written statement shall be accompanied by copies of all materials relating to the subject of the proposed discipline and shall contain a description of the events which necessitated the dismissal, a statement of the charges, and the right of the employee to meet with the appointing authority and/or respond in writing within a reasonable time frame to giving the employee notice of the charges.

30.4 **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.

30.5 Employee's Response - An employee's opportunity to respond to the appointing authority is not intended to be an evidentiary hearing. 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 departments' witnesses. 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 director'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 employees response, if any. Within five (5) business days of the employee's response, or other deadline for response established by the parties, the decision of the appointing authority will be transmitted in writing to the employee. Service of the decision will be in person or by registered mail.

30.6 Appeal Procedures - Any permanent employee in the classified service shall have the right to appeal any termination or demotion. The appeal process shall not be applicable to probationary employees. The appeal process shall not be applicable to verbal and written reprimands, performance evaluations and denial of merit increases.

An employee desiring to appeal the appointing authority'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 addressed to the Administrative Services Director and received in the Administrative Services Department and date stamped by the Administrative Services 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 of the appointing authority shall be considered conclusive and shall take effect as prescribed. With respect to demotions and terminations, if, within the 10-day appeal period, the employee involved files such notice of appeal by giving written notice of appeal to the Administrative Services Department, an advisory arbitration appeal hearing shall be established as follows:

- a. The employee shall file a written request with the Administrative Services Department for advisory arbitration.
- b. At the initiation of this MOU and the beginning of each subsequent calendar year, a list of registered arbitrators will be certified by the parties. CMFA 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 Conciliation Service or some other agreed upon source. If a new list of arbitrators is not certified prior to February 28<sup>th</sup> of each calendar year, then the previous year's list of arbitrators will be carried over.
- c. Within seven (7) calendar days of the employee's request for an arbitration appeals hearing, each party will strike three names from the established list. If a mutual agreement cannot be reached between the parties as to the selection of an arbitrator from the remaining four, the matter will be heard by the first available arbitrator who fits 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 lot. The priority of striking names shall alternate from one party to the other each time advisory arbitration is invoked by the same parties.
- d. The selected arbitrator shall serve as the hearing officer.
- e. 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 Administrative Services Director. The parties may stipulate to a longer or shorter period 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.

- f. All hearings shall be private, however, the employee may request to open the hearing to the public.
- g. 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.
- h. 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 that 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.
- i. 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.
- j. 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 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.
- k. 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, 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, before 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, 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 therefore. The opinion shall set forth findings of fact and conclusions.

- l. 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 department director.
- m. The record of the administrative hearing and the hearing officer's opinion and recommendation shall be filed with the City Manager or Assistant City Manager, with a copy sent to the charged employee, and the Administrative Services 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.
- n. The City Manager or Assistant City Manager shall read the administrative record of the hearing, review the hearing officer's opinion and recommendation and then render a decision on the appeal within thirty days of the filing of said opinion and recommendation. The decision of the City Manager or Assistant City Manager shall be final and conclusive. Copies of the City Manager or Assistant City Manager's decision, shall be filed where appropriate, including the employee's personnel file, unless no discipline is upheld by the City Manager or Assistant City Manager.
- o. The City shall bear the cost to the parties for the facilities, fees and expenses of the hearing officer if the hearing 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 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 may not apply to mutual settlements by the parties that result in an arbitration fee.
- p. In the case of suspension, demotion, reduction in salary, or dismissal prescribed by the City Manager or Assistant City Manager, the time of such discipline shall relate back to the date the employee was disciplined or after delivery of the City Manager or Assistant City Manager's decision if discipline was stayed pending the arbitration hearing. If the City Manager or Assistant City Manager's decision results in a reduction or elimination of a recommended loss of pay, the pay loss shall be restored to the employee.
- q. In the cases of appeals from suspensions and reductions in pay, the hearing shall be conducted by the City Manager or Assistant City Manager. The employee shall bear none of the costs of the facilities, the hearing officer or other costs incurred by the City.
- r. 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 or Assistant City Manager's final determination into the California Court System, which must be made in accordance to the time standards and procedures established by Section 1094.5 and 1094.6 of California's Code of Civil Procedure.

**ARTICLE 31 - RETURN TO WORK POLICY**

31.1 **PHYSICIAN RELEASE** - The City shall implement through an Administrative Regulation a "Return to Work Policy" for employees who are released by their physician(s) to return to work for full duty in the manner set forth in Appendix B.

**ARTICLE 32 - MAXIMUM AGE FOR PUBLIC SAFETY EMPLOYEES**

32.1 **ADMINISTRATIVE REGULATION** - The City shall implement an Administrative Regulation regarding the maximum age for public safety employees in the manner set forth in Appendix C.

**ARTICLE 33 - MEET AND CONFER IN GOOD FAITH**

33.1 **ACT OR DECISION IMPACTING TERMS** -The City and CMFA agree to meet and confer in good faith within two weeks after passage of any Act or decision of any court of competent jurisdiction which has significant financial impact upon the City and may, as a result, affect the terms and conditions stated herein.

33.2 **NEW CONTRACT NEGOTIATIONS** - The parties agree to meet and confer in good faith after April 2007 on wages, hours and other terms and conditions of employment to be effective on or about the first pay period July 2007.

REPRESENTATIVES OF THE COSTA MESA  
FIREFIGHTERS ASSOCIATION

REPRESENTATIVES OF THE CITY OF  
COSTA MESA

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## APPENDIX A

### DRUG AND ALCOHOL POLICY PURSUANT TO THE DEPARTMENT OF TRANSPORTATION REGULATIONS

#### **I. Purpose**

Effective January 1, 1996, the City of Costa Mesa must comply with the United States Department of Transportation regulations implementing the Federal Omnibus Transportation Employee Testing Act of 1991. Specifically, the City complied with the regulations of the Federal Highway Administration (FHWA). Adoption of a policy was one of the City's obligations under the regulations.

Though not required by the Federal Omnibus Transportation Employee Testing Act of 1991, the City of Costa Mesa has established a separate policy that sets forth the rights and obligations of employees in the classification of Fire Engineer and all probationary firefighters (covered employees). If you are a Fire Engineer or probationary employee covered by these new requirements, you should familiarize yourself with the provisions of this policy because compliance with this policy is a condition of your employment as a Fire Engineer or probationary employee.

#### **II. Definitions**

- A. Controlled Substance – Those drugs that are required by Department of Transportation agency drug testing programs: marijuana, cocaine, opiates, amphetamines and phencyclidine.
- B. Covered Employees-Fire Engineer and Probationary Employees.
- C. Drug Test - The compulsory production and submission of urine or breath by an employee in accordance with departmental procedures, for chemical analysis to detect prohibited drug usage.
- D. Drug Use - Use of controlled substance or alcohol.
- E. Fire Engineer - A person in the classification of Fire Engineer.
- F. Medical Review Officer (MRO) - The Medical Review Officer is a licensed physician who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with his medical history and other relevant bio-medical information.
- G. New Hire - An employee who has been newly hired and is serving a probationary period.
- H. Probationary Employee - For the purpose of this policy only, a probationary employee shall be considered to be any new hire or transfer employee who is conditionally employed with the Fire Department.

- I. Reasonable Suspicion - A belief, based upon objective facts, sufficient to lead a reasonable prudent supervisor to suspect that an employee is under the influence of alcohol or controlled substances as more fully described below.
- J. Supervisor - Those employees assigned to a position having day-to-day responsibility for supervising subordinates, or who are responsible for commanding a work element.
- K. Transfer Employee - An employee who has been newly hired as a lateral transfer from another agency and is serving a probationary period.

### **III. Policy**

#### **A. Fire Engineers**

- 1. Employees in the classification of Fire Engineer are "covered employees" who operate commercial motor vehicles as defined below and thus are subject to all of the provisions of this policy:
  - a. A vehicle with a gross combination weight of at least 26,001 pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;
  - b. A vehicle with a gross vehicle weight of at least 26,001 pounds;
  - c. A vehicle designed to transport 16 or more passengers, including the driver; or
  - d. A vehicle used to transport those hazardous materials found in the Hazardous Materials Transportation Act.
- 2. Fire Engineers may not be under the influence or in possession of controlled substances or alcohol during work hours. Further, certain conduct is prohibited (See Section 3 below) while performing and before performing safety sensitive functions. The following are safety sensitive functions:
  - a. All time at a fire station, carrier or shipper, plant, terminal, facility, or other property, waiting to be dispatched, unless the driver has been relieved from duty by the employer.
  - b. All time inspecting equipment as required by the Federal Motor Carrier Safety Regulations (FMCSRs), or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time.
  - c. All time spent at the driving controls of a commercial motor vehicle.
  - d. All time, other than driving time, spent on or in a commercial motor vehicle.

- e. All time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded.
- f. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

3. Prohibitions:

The following conduct is prohibited and may result in discipline, as defined more fully below:

- a. Reporting for duty or remaining on duty requiring the performance of safety sensitive functions while having an alcohol concentration level of 0.04 or greater;
- b. Performing a safety sensitive function while having an alcohol concentration of 0.04 or greater;
- c. Being on duty or operating a vehicle described above, while possessing alcohol;
- d. Using alcohol while performing a safety sensitive function;
- e. Reporting for duty or remaining on duty requiring the performance of safety sensitive functions when the employee used any controlled substances, except if the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to safely operate a vehicle;
- f. Reporting for duty or remaining on duty requiring the performance of safety sensitive functions when the employee has used any prescription medicine which adversely affects the employee's ability to safely operate a vehicle;
- g. Reporting for duty or remaining on duty requiring the performance of safety sensitive functions if the employee tests positive for controlled substances;
- h. Refusing to submit to any alcohol or controlled substances test required by this policy. A covered employee who refuses to submit to a required drug/alcohol test will be treated in the same manner as an employee who tested 0.04 or greater on an alcohol test or tested positively on a controlled substances test.

A refusal to submit to an alcohol or controlled substances test required by this policy includes, but is not limited to:

- (1) A refusal to provide a urine sample for a drug test;

- (2) An inability to provide a urine sample without a valid medical explanation;
  - (3) A refusal to complete and sign the breath alcohol testing form, or otherwise to cooperate with the testing process in a way that prevents the completion of the test;
  - (4) An inability to provide breath or to provide an adequate amount of breath without a valid medical explanation;
  - (5) Tampering with or attempting to adulterate the urine specimen or collection procedure;
  - (6) Not reporting to the collection site in the time allotted by the supervisor or manager who directs the employee to be tested;
  - (7) Leaving the scene of an accident without a valid reason as to why authorization to do so was not obtained from a supervisor or manager who shall make a determination whether to send the employee for a post-accident drug and/or alcohol test based upon reasonable suspicion.
- i. Consuming alcohol during the eight hours immediately following an accident; or until the employee undergoes a post-accident alcohol test, whichever occurs first, if ordered to undergo a post-accident drug and/or alcohol test on the basis of reasonable suspicion.

In addition to the above prohibitions, employees are reminded of similar obligations under the Federal Drug Free Workplace Act of 1988. All employees covered by this Policy have been provided with a copy of the City's Drug Free Workplace Statement in the Employee Handbook.

4. Fire Engineers whose alcohol test indicates an alcohol concentration level between 0.02 and 0.04 will be removed from his or her safety sensitive position for at least 24 hours.
5. Reasonable Suspicion Testing: Fire Engineers are required to submit to an alcohol or drug test only when a trained supervisor has reasonable suspicion to believe the employee is under the influence of alcohol or controlled substances. The observation must be based on short-term indicators, such as blurry eyes, slurring, or alcohol on the breath. The supervisor may not rely on long-term signs, such as absenteeism or tardiness, to support the need for a reasonable suspicion test.

The reasonable suspicion alcohol test will be administered within two hours of the observation. If not, the employer must provide written documentation as to why the test was not promptly conducted. No test may be administered after eight hours following the observation.

To ensure that supervisors are trained to make reasonable suspicion determinations, supervisors vested with the authority to demand a reasonable

suspicion drug and alcohol test will attend at least two hours of training on controlled substances use. The training will cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances. The training will be conducted at a facility or given by a person authorized by the Department of Transportation (DOT) to conduct such training in reasonable suspicion determinations.

B. Probationary Employees:

1. Random Testing. Probationary employees will be subject to mandatory random alcohol and drug testing a maximum of three times during their probationary periods at the discretion of the Fire Department.
2. On the date a probationary employee is selected for random drug testing, his/her supervisor will ensure his/her duties are covered. The employee will receive a written notice in the morning indicating the time he/she is to report to the lab for testing.

C. Reporting requirement for all covered employees:

1. Covered employees who notify their immediate supervisors when required to use prescription medicine which they have been informed by a licensed physician has the potential to impair job performance shall be immune from discipline for reporting to duty in that condition and may be subject to temporary reassignment to other duties, where appropriate, with no loss of pay or benefits or relief from duty with pay, only until the licensed physician has determined that the prescription medication does not impair job performance or is no longer needed. The employee shall advise the supervisor of the known side effects of such medication and the prescribed period of use, if possible.
2. Any employee who intentionally ingests, or is made to ingest, a controlled substance shall immediately report the incident to his/her supervisor so that appropriate medical steps may be taken to ensure the employee's health and safety.

D. Procedures to be used for detection of drugs and alcohol for all covered employees:

The City will designate an off-site collection facility and laboratory licensed by Substance Abuse and Mental Health Services Administration (SAMHSA) will ensure that the supervisor ordering the test gives the employee a reasonable amount of time to report to the site and will provide transportation to and from the site.

1. Alcohol Testing

Alcohol testing will be conducted by using an evidential breath testing device (EBT) approved by the National Highway Traffic Safety Administration. Non-EBT devices may be used for initial screening tests.

A screening test will be conducted first. If the result is an alcohol concentration level of less than 0.02, the test is considered a negative test. If the alcohol concentration level is 0.02 or more, a second confirmation test

will be conducted. Levels of .04 or greater on the confirmation test will be considered positive.

2. Drug Testing:

Drug testing will be conducted pursuant to the procedures attached to this policy (Attached Procedure) which follow the requirements of Department of Transportation Regulations. Proper immunoassay tests will be used which meet the requirements of the Food and Drug Administration for commercial distribution as provided by the DOT Regulations.

- a. The urine specimen will be split into two bottles labeled as "primary" and "split" specimen. Both bottles will be sent to the lab.
- b. If the urinalysis of the primary specimen tests positive for the presence of illegal, controlled substances, the employee has 72 hours from the time he/she is so notified by the MRO to request that the split specimen be analyzed by a different certified lab. The cost and reanalysis of the specimen must be paid in advance by the employee and will be reimbursed by the Fire Department if the retest does not confirm the positive result. If the retest does not confirm the positive result, the MRO will report the test as negative to the Fire Department.
- c. The urine sample will be tested for the following: marijuana, cocaine, opiates, amphetamines, and phencyclidine. The levels for screening and confirmation testing will be those in the Attached Procedure and as modified from time to time by the Department of Health and Human Services for the DOT Regulations.
- d. If the test is positive for one or more of the drugs, a confirmation test will be performed using gas chromatography/mass spectrometry analysis as described more fully below.
- e. All drug test results will be reviewed and interpreted by the MRO before they are reported to the employee and then to the City as described more fully below.
- f. With all positive drug tests, the MRO will first contact the employee to determine if there is a valid explanation for the positive test result. If the MRO determines that there was a valid explanation for the positive test result, the test result shall be reported to the City as "negative."

E. Refusal to submit to an alcohol and/or drug test:

A covered employee who refuses to submit to any required drug/alcohol testing will be treated in the same manner as an employee who tested 0.04 or greater on an alcohol test or tested positively on a controlled substances test.

F. Consequences of failing an alcohol and/or drug test:

A positive result from a drug or alcohol test reported by the MRO may result in

disciplinary action, up to and including termination.

Pending disciplinary action, the covered employee may be removed from performing any safety-sensitive function and may be temporarily reassigned to other duties where appropriate with no loss of pay or benefits. Discipline of employees for violation of this policy shall be in accordance with the due process rights provided in the Department's discipline and grievance procedures and by law and will be under procedures used for all other disciplines. The principles of progressive discipline will be employed. Disciplinary action may include rehabilitation and mandatory random testing. Each employee is an entity upon himself or herself and action will be taken consistent with the work history background of the employee.

At the Department's discretion, those employees who have a positive result reported by the MRO for the first time in his or her tenure with Costa Mesa may have the option of entering a rehabilitation program approved by the City in lieu of discipline. This program will be at his or her expense unless the City's Employee Assistance Program provides adequate rehabilitation satisfactory to the City. Upon proof of satisfactory completion of the program, the employee will resume work and submit to a maximum of three random drug tests per year at his or her expense for two years.

- G. Information concerning the effects of alcohol and controlled substances and available methods of intervention.

Attached to this policy are fact sheets, addressing the effects of alcohol and the various controlled substances that are tested for under this policy.

You should also be aware that the City has established an Employee Assistance Program, *Employee Support System Company (ESSCO)*, to help employees who need assistance with alcohol and controlled substance abuse. (See attached page for specific information regarding the EAP).

#### **IV. Effective Date:**

The effective date of this policy for covered employees is July 1, 2000.

Employees shall refer any questions regarding his/her rights and obligations under this policy or under the new regulations to the Administrative Services Director.

## ATTACHMENT A

### **Collection Facility**

Tustin Irvine Medical Group  
800 N. Tustin, Suite A  
Santa Ana, CA 92705

(714) 245-0800

### **Testing Laboratory**

Pacific Toxicology  
6160 Variel Avenue  
Woodland Hills, CA 91367

(818) 598-3110

### **Medical Review Officer - MRO**

John Alevizos, D.O.  
Tustin Irvine Medical Group  
800 N. Tustin, Suite A  
Santa Ana, CA 92705

(714) 245-0800

### **Employee Assistance Program & Substance Abuse Professional - EAP & SAP**

ESSCO  
Employee Support System Company  
309 North Rampart Street, Suite A  
Orange, CA 92668

(714) 978-7915

## PROCEDURES (ATTACHMENT B)

- A. Drug Testing Procedures - The testing procedures and safeguards provided in this policy are to ensure that the integrity of Fire Department drug testing shall be adhered to by any personnel administering drug tests. All collection and testing shall be conducted pursuant to DOT Regulations at sites licensed by SAMHSA and shall include the safeguards provided below.
1. Personnel authorized to administer drug tests shall require positive identification from each employee to be tested before they enter the testing area.
    - a. Each employee shall provide positive identification to testing personnel.
  2. A pre-test interview shall be conducted by testing personnel with each employee in order to ascertain and document the recent use of any prescription or non-prescription drugs, or any indirect exposure to drugs that may result in a false positive test result.
  3. Specimen Collection:
    - a. The testing facility area should be private and secure and procedures shall allow individual privacy .
    - b. Testing personnel must positively identify the employee providing the sample.
    - c. Testing personnel should search the area in which the sample is to be produced and verify it is free of potential contaminants.
    - d. Testing personnel shall require the employee being tested to remove any unnecessary outer garments (i.e., coats, jackets, etc.) and shall visually check for signs of concealed items that might be used to adulterate or substitute a sample. Personal belongings such as briefcases, and purses, etc., must remain with the employee's outer garments.
    - e. Any urinal or toilet should be filled with blue-colored water.
    - f. The employee being tested will wash his hands with soap and water.
    - g. The employee will urinate into one container which will then be split according to DOT regulations. The containers will be sealed in the presence of the employee and the employee's identifying mark will be placed on the containers.
    - h. Immediately after obtaining the sample, it shall be tested for appropriate temperature and the actual temperature recorded.

- i. The sample containers must be immediately sealed, appropriately labeled, and the number rechecked to ensure it is referenced to the employee providing the sample.
  - j. The sample should be stored in a secure area in accordance with laboratory procedures until delivery to the contracting laboratory if necessary.
  - k. Personnel utilized for testing will be certified as qualified to collect urine samples or adequately trained in collection procedures as required by DOT Regulations.
4. Where the employee appears unable, or unwilling to give a specimen at the time of the test, testing personnel shall document the circumstances on the drug test report form. The employee shall be permitted no more than four (4) hours to give a sample, during which time he or she shall remain in the testing area, under observation. Reasonable amounts of water may be given to the employee to encourage urination. Failure to submit a sample shall be considered a refusal to submit to a drug test unless there is a valid medical explanation as determined by the MRO.

B. Drug Testing Methodology:

- 1. The testing or processing phase shall consist of a two-step procedure:
  - a. Initial screening test, and
  - b. Confirmation test.
- 2. The urine sample is first tested using the initial drug screening procedure. An initial positive test result will not be considered conclusive; rather, it will be classified as "confirmation pending." Notification of test results to the Deputy Chief shall be held until the confirmation test results are obtained.
- 3. A specimen testing positive will undergo an additional confirmatory test. The confirmation procedure shall be technologically different and more sensitive than the initial screening test and shall be performed using gas chromatography/mass spectrometry analysis.
- 4. The drug screening tests selected shall be capable of identifying marijuana, cocaine, and every major drug of abuse including heroin, amphetamine and barbiturates.
- 5. Concentrations of a drug at or above the following levels shall be considered a positive test result when using the initial immunoassay drug screening test:

	Initial Test Level (ng/ml)
Marijuana metabolite .....	100
Cocaine metabolite .....	300
Opiate metabolite .....	2,000
Phencyclidine .....	25
Amphetamines .....	1,000

Concentrations of a drug at or above the following levels shall be considered a positive test result when performing a confirmation GC/MS test on a urine specimen that tested positive using a technologically different initial screening method:

	Confirmatory Test Level (ng/ml)
Marijuana metabolite .....	15 (1)
Cocaine metabolite .....	150 (2)
Opiates:	
Morphine .....	2,000
Codeine .....	2,000
Phencyclidine .....	25
6-Acetylmorphine.....	10 (4)
Amphetamines:	
Amphetamine .....	500
Methamphetamine .....	500 (3)

- (1) Delta-9-tetrahydrocannabinol-9-carboxylic acid
- (2) Benzoyllecgonine
- (3) Specimen must also contain amphetamine at a concentration greater than or equal to 200 ng/ml.
- (4) Test for 6-Acetylmorphine when the morphine concentration exceeds 2,000 ng/ml.

- 6. The laboratory selected to conduct the analysis shall be experienced and capable of quality control, documentation, chain-of-custody, technical expertise, and demonstrate proficiency in urinalysis. It shall be licensed by SAMHSA.
- 7. Employees having negative drug test results shall receive a memorandum from the lab stating that no illegal drugs were found. If the employee so requests, a copy of the memorandum will be placed in the employee's personnel file.

C. Chain of Evidence-Storage:

- 1. Each step in the collecting and processing of the urine specimens shall be documented to establish procedural integrity and the chain of custody.
- 2. Where a positive result is confirmed, urine specimens shall be maintained in secured, refrigerated storage for an indefinite period.
- 3. In the event of a positive confirmatory test, the employee may utilize testing of the split sample as provided by DOT Regulations.

D. Drug Test Results:

1. All records pertaining to Fire Department-required drug tests shall remain confidential and shall not be provided to other employers or agencies without the written permission of the person whose records are sought.
2. Drug test results and records shall be stored and retained in compliance with state law by the Deputy Chief, or for an indefinite period in a secured area where there is no applicable state law. These results and records shall be kept separate and apart from the covered employee's personnel file(s). The personnel file shall not contain any reference to the employee's being sent for drug testing.
3. Positive drug test results will be sent directly to the Deputy Chief as described in Section E.6. below. A negative reading on the initial or confirmatory test or on the split sample test will be reported as negative with no retesting.

E. Medical Review Officer:

1. The City shall contract for a Medical Review Officer (MRO), who will be responsible for the determination of positive drug tests.
2. The laboratory shall report all drug test results to the MRO. The MRO shall review all positive drug tests against the information provided by the employee (prior to the drug test being administered) on the questionnaire and will contact the employee to determine if there is a valid explanation for the positive test result.
3. If the MRO determines there is a valid explanation for the positive drug test, the test shall be reported as negative.
4. If no valid explanation is determined for the positive test results, then the test shall be reported as positive. However, should the employee exercise his or her option to have the split sample tested and the result does not confirm the positive result, the test shall be reported as negative.
5. The MRO shall examine all employees, prior to submission to a drug test, who have been sent for a drug test based upon reasonable suspicion. The purpose of the examination is to determine if there is in fact reasonable suspicion to test the employee. If the MRO determines that there is no reasonable suspicion for testing, based upon physical symptomology, that employee is then returned to the supervisor for action.
6. When the MRO reports a positive result to the Fire Department, it shall be given in writing directly to the Deputy Chief who shall keep the result confidential and shall not share it with anyone except the Fire Chief and the Administrative Services Director when making a decision as to action to be taken based upon the positive result. Privacy rights of the employee and the employee's right to inspect his own drug test report will follow DOT guidelines and federal and California law.

## APPENDIX B

ADMINISTRATIVE REGULATION  
CITY OF COSTA MESA

A. R. 2.5

Section 1-4

July 1, 2000 (Revised)

Page 1 of 4

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### RETURN TO WORK POLICY

#### I. Purpose

The purpose of this Regulation is to establish a uniform procedure for utilizing employees who have been released to return to work with temporary work limitations or restrictions by a licensed physician due to occupational or non-occupational injuries or illnesses; to promote effective use of valuable employee resources to maintain departmental productivity at the highest levels possible and to reduce the cost of employee absences.

#### II. Policy

Departments are encouraged to provide suitable temporary modified duty assignments in accordance with a doctor's work release instructions, whenever meaningful and/or needed work can be performed by the recuperating employee.

#### III. Procedures

- A. An employee, who is off work on personal leave, or industrial accident leave, is to notify his/her department immediately when any type of limited/modified duty work release has been obtained from his/her doctor. A sample "Medical/Return to Work Release" form is attached and may be considered for use by departments. Fire Department employees will use the form only to verify that the job description was reviewed by the treating physician.
- B. The department should evaluate the nature of the work limitations or restrictions imposed, review the work needs of the department, and identify a suitable assignment. The temporary assignment may be in the same, equal, or lower job classification. Risk Management should be consulted on all cases involving work-related injuries or illnesses before instituting the modified duty assignment.
- C. In cases of industrial accident leave, if the employee's own department does not have suitable modified duty to offer, Risk Management may arrange for a temporary alternate assignment to be provided within another City department.
- D. A temporary limited/modified duty assignment should not be altered, nor an employee returned to full and unrestricted duty, without the appropriate written medical clearance to do so.
- E. Employees off work on industrial accident leave who fail to notify their departments when given any type of a work release, may be subject to disciplinary action.

**IV. Effective Date**

The effective date of this revised Administrative Regulation is September 3, 1971 and subsequently revised on July 1, 2000.

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STEVEN E. HAYMAN  
ADMINISTRATIVE SERVICES DIRECTOR

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ALLAN L. ROEDER  
CITY MANAGER

**Costa Mesa Fire Department  
Medical/Return to Work Release Form**

Name: \_\_\_\_\_

Shift/Assignment: \_\_\_\_\_

**JOB DUTIES AND PHYSICAL REQUIREMENTS**

\_\_\_\_\_ **Firefighter, Firefighter/Paramedic**

Responds to alarms of fire or other emergencies, utilizes various tools, equipment and methods to fight fires; responds to requests for emergency medical care and performs rescue activities; conducts fire prevention inspections, enforces fire related codes and ordinances. Must be able to sit, stand, walk, bend, crouch, squat, crawl, twist; climb ladders and stairs; work at considerable heights; lift, carry, drag, pull and push very heavy weights; perform work in physically demanding and adverse conditions, including heat, smoke, fire, high temperature, humidity and cramped spaces; exposure to allergenic and potentially harmful substances exists.

\_\_\_\_\_ **Fire Captain**

Same duties and physical requirements as above; in addition, performs responsible and advanced firefighting and fire prevention work of a supervisory nature; supervises and participates in fire hazard inspection activities; supervises, trains and plans the work of Firefighters, Firefighter/Paramedics and Fire Engineers.

\_\_\_\_\_ **Fire Engineer**

Same physical requirements as above. Performs advanced work in the prevention and suppression of fires; primary duties entail driving fire and rescue apparatus and operating firefighting equipment. Must maintain a valid class "A" drivers license with tanker and airbrake endorsements, and a valid Department of Motor Vehicles Medical Certificate (DL51A).

**DOCTOR'S CERTIFICATION**

The above employee, whose job duties and physical requirements are described above, is released to return to work as follows:

\_\_\_\_\_ Full Duty, without restriction on \_\_\_\_\_  
Date

\_\_\_\_\_ With the following work restrictions/limitations on \_\_\_\_\_  
Date

Restrictions: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Doctor's Name \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

Phone \_\_\_\_\_

\_\_\_\_\_  
Doctor's Signature

\_\_\_\_\_  
Date

## APPENDIX C

ADMINISTRATIVE REGULATION  
CITY OF COSTA MESA

A. R. 2.4  
Section 1 – 2  
July 1, 2000 (Revised)  
Page 1 of 2

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### MAXIMUM AGE POLICY FOR PUBLIC SAFETY EMPLOYEES

I. **Purpose:**

The purpose of this regulation is to establish in accordance with the Age Discrimination in Employment Amendments of 1996, a uniform procedure whereby safety employees attaining the age of 60 must submit a request for an extension of employment. The amendments restore the public safety exemption of the Age Discrimination Employment Act. Under the exemption, the City may reestablish age limits for retiring public safety officers.

II. **Policy:**

All safety employees attaining the age of 60 may request, sixty days prior to their 60th birthday, initially, and sixty days prior to each subsequent birthday, an extension to continue their employment with the City of Costa Mesa.

III. **Procedure:**

A. Employees attaining the aforementioned age wishing to continue employment must:

1. Submit in writing, sixty days before their aforementioned birthday, a request to continue employment.
2. Submit in writing, sixty days before each subsequent birthday, a request to continue employment.

B. Employees shall submit the request to their respective Department Director. The Department Director shall:

1. In the Fire Department, the department director shall accept the initial and subsequent requests if the employee has satisfactorily completed the most recent Physical Fitness Analysis or Physical Abilities Test.
2. In the Police Department and in the Fire Department when the employee fails the Physical Fitness Analysis or Physical Abilities Test, the department director shall consider all information submitted by the employee and shall also consider such aspects as: the essential functions, physical tasks and environmental conditions, of the position; recommendations and comments by the employee's supervisors; job hazards, safety and the general working environment and any other job-related criteria pertinent to the situation and attach his/her recommendations to the request. The Department Director will

then forward the request to the City Manager's office with aforementioned recommendations for final action. The City Manager shall make the final decision relative to extensions of employment. It shall be the policy of the City Manager that justification for continuance shall be based solely on the benefit to the City of Costa Mesa.

**IV. Effective Date:**

The effective date of this revised Administrative Regulation is July 1, 2000.

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STEVEN E. HAYMAN  
ADMINISTRATIVE SERVICES DIRECTOR

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ALLAN L. ROEDER  
CITY MANAGER

APPENDIX D

CITY OF COSTA MESA, CALIFORNIA

COUNCIL POLICY

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**PURPOSE**

The purpose of this policy is to establish the eligibility criteria, participation requirements, and benefits to be provided for life and medical insurance for retired employees of the City.

**POLICY**

A. Eligibility

1. Employees:
  - (a) Full-time employees who are currently employed or who will be employed full-time as of December 31, 2003; and,
  - (b) Have participated in the City's group medical plan for a minimum of five (5) consecutive years at any time during employment and are enrolled in the medical plan immediately prior to retirement; and,
  - (c) Immediately commence receiving a retirement allowance from the Public Employees' Retirement System (PERS) upon separation from City employment.
2. City Council Members are eligible to participate on the same basis as full-time employees, with the following exceptions:
  - (a) City Council Members must have sufficient service time vested with PERS to be eligible for a monthly retirement benefit under the system (five (5) years of service time or more), and shall retire and commence receipt of a monthly retirement allowance within 30 days following their separation from office.
  - (b) Council Members shall be enrolled in the medical plan immediately prior to retirement.
  - (c) Council Members shall pay all premium costs without City contribution.
3. Retirees:
  - (a) All Retirees who are currently participating in the City's medical plan; and
  - (b) Who have previously met the eligibility requirements of this Policy; and
  - (c) Who continue to receive monthly benefits from the retirement system.

B. Participation Requirements and Contributions

1. The City contribution rate is based upon the following criteria:
  - (a) The effective date of retirement.
  - (b) The number of years the employee/retiree has spent with the City as a full-time employee, with a minimum of 10 years of service required for eligibility for a contribution.

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- (c) The maximum contribution is for the “employee only” premium of the plan selected by the majority of active employees, as determined by the City, to a maximum of \$500 per month.
  - (d) The contribution may be 100% of the rate for the Medicare-qualified Retiree, where the Supplement to Medicare premium is lower than the dollar contribution that the Retiree would otherwise qualify for.
2. The City's monthly contributions will be calculated as follows:
  - (a) Retirees who have retired from City service on or before July 19, 1993:
    - 10 to 19 years of service 50%, not to exceed \$250
    - 20 to 29 years of service 75%, not to exceed \$375
    - 30 years of service or more 100%, not to exceed \$500
  - (b) Retirees who have retired from City service July 20, 1993 through August 18, 2003:

The contribution rates are based upon the actual years of service (rounded to the nearest full year) beginning with 10 years of service at 50%, and progressing in 2½% increments to 100% at 30 years of service or more. The maximum monthly contribution at the 100% benefit level is \$500. The maximum monthly contribution at benefit levels less than 100% is the dollar amount resulting from the applicable % rate applied to \$500.

EXAMPLE: Retiree is eligible for a 70% contribution  
\$500 X 70% = \$350 maximum monthly contribution
  - (c) Employees who retire effective August 19, 2003 and thereafter:

The contribution rates are based upon the actual years of service (rounded to the nearest full year) beginning with 10 years of service at 50%, and progressing in 3 1/3% increments to 100% at 25 years of service or more. The maximum monthly contribution at the 100% benefit level is \$500. The maximum monthly contribution at benefit levels less than 100% is the dollar amount resulting from the applicable % rate applied to \$500. (See example above.)
  - (d) Employees hired after January 1, 2004 will participate in the mandatory defined contribution plan and are not eligible for the Retired Employees' Medical Program.
3. The Retiree will pay the remaining premium, if any, based upon the above schedules, in excess of the City contribution for the coverage selected. The Retiree will also pay all premiums for any eligible dependents enrolled on the Retiree's coverage.

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4. Premium remittance by the Retiree shall be in the method prescribed by the City and medical plan requirements, and may be subject to change from time to time. Premium payment may be facilitated through deductions from the Retiree's monthly PERS retirement allowance, or, may require direct payment to the City. By whatever method of payment used, the City shall have the right to cancel coverage if payment is not received in accordance with City requirements. This cancellation will only take place after the City notifies the participant of their rights of continuation under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).
5. There is a forfeiture of contribution provision for the Retired Employees' Medical Program. Should a Retiree elect to cancel enrollment in the City Medical Plan, they may be eligible to re-enroll at a future Open Enrollment Period, subject to applicable plan rules. However, any premium contribution from the City previously received is forfeited and will not resume, and the Retiree will be solely responsible for payment of the full premium for the new coverage selected.

C. Life Insurance

1. Retired employees of the City will be eligible for term life insurance in the amount of \$1,000 for the retired employee and \$500 for their spouse.
  - (a) To maintain eligibility, the Retiree shall comply with all record keeping requirements of the City, including responding to periodic requests for updated information.

D. Notations

1. The benefits offered by the Retired Employees' Medical Plan are the same benefits available to active employees of the City under the City Medical Plan and are processed in the same manner.
2. This policy covers all employees currently retired and participating in the medical plan and is available to Employees retiring in the future who meet the eligibility requirements listed above, and who are employed full-time as of December 31, 2003.
3. Employees hired after January 1, 2004 will participate in the mandatory defined contribution plan and are not eligible for this Retired Employees' Medical Program.

Amended by Minute Resolution adopted December 11, 1989.

Amended by Minute Resolution adopted July 20, 1993.

Amended by Minute Resolution adopted August 18, 2003.