

CITY OF SAN JUAN CAPISTRANO
PERSONNEL RULES AND REGULATIONS

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RULE 1	ADMINISTRATON OF PERSONNEL RULES AND REGULATIONS	
Section	1.01 Personnel Officer.....	2
	1.02 Personnel Records.....	2
	1.03 Protection of Right to Privacy	3
RULE 2	DEFINITIONS	3
RULE 3	DEPARTMENT RULES	7
RULE 4	FAIR EMPLOYMENT.....	7
RULE 5	CLASSIFICATION PLAN	8
Section	5.01 Nature and Contents of Plan	8
	5.02 Amendment of Classification Plan	9
RULE 6	SALARY ADMINISTRATION.....	9
Section	6.01 Preparation of the Pay Plan.....	9
	6.02 Pay Plan Structure	10
	6.03 Entrance Rates on Initial Employment.....	10
	6.04 Pay for Temporary and Part-Time Work	10
	6.05 Pay for Probationary Employees	10
	6.06 Pay Increases	10
	6.07 Pay Adjustment Upon Promotion.....	11
	6.08 Pay Adjustment Upon Demotion.....	11
	6.09 Pay Adjustment Upon Re-employment.....	11
	6.10 Special Merit Pay	11
	6.11 Recognition Bonus Pay	11
	6.12 Bilingual Pay	12
	6.13 Acting Appointment Pay	13
	6.14 Payroll Deductions	13
	6.15 Work Day and Work Week	13
	6.16 Flextime	14
	6.17 Management Flextime	14
	6.18 Overtime	14
	6.19 Emergency Stand-By/Call out.....	15
	6.20 Work on a Holiday	15
	6.21 Flexible Staffing.....	15
RULE 7	EMPLOYEE BENEFITS.....	16
Section	7.01 Vacation Accrual and Use	16
	7.02 Vacation Usage	16
	7.03 Vacation Benefits for Terminating Employees	16

7.04 Holidays Occurring During Vacation	17
7.05 Holidays	17
7.06 Floating Holiday	18
7.07 Sick Leave.....	18
7.08 Sick Leave Allowance	18
7.09 When Sick Leave May Be Taken.....	19
7.10 Notification Of Illness by Employee	19
7.11 Return from Sick Leave	19
7.12 Sick Leave Payout Prior to Separation of Employment.....	20
7.13 Sick Leave Cash-Out Upon Separation of Employment	20

OTHER LEAVES OF ABSENCE 21

7.14 Community Service Leave.....	21
7.15 Bereavement Leave	21
7.16 Jury Duty Leave	21
7.17 School Activity Leave	22
7.18 Family and Medical Leave Policy	22
7.19 Military Leave	29
7.20 Leave of Absence Without Pay.....	29
7.21 Administrative Leave	29
7.22 Administrative Compensation	30
7.23 On-the-Job Injury Leave	30
7.24 Compensation for Job Connected Illness or Injury.....	30
7.25 Non-Work Related Disability Leave	31
7.26 Unauthorized Absence	31

OTHER BENEFITS..... 31

7.27 Medical, Life, Vision, and Dental Insurance	31
7.28 COBRA	31
7.29 Retiring Employee Recognition Program.....	32
7.30 Retirement Plan	32
7.31 Short-Term/ Long-Term Disability Program	32
7.32 Deferred Compensation Program.....	32
7.33 401(a) Deferred Compensation Program.....	32
7.34 Educational Reimbursement	32
7.35 Ride Share Program.....	33
7.36 Mileage Reimbursement.....	33
7.37 Auto Allowance	33
7.38 Lunch and Break Periods	33
7.39 IRS Code Section 125 Plan.....	33

RULE 8

EMPLOYMENT PRACTICES 34

Section

8.01 Fair Employment Practice	34
8.02 Non-Discrimination Policy.....	34
8.03 Hiring Relatives	34
8.04 Requisition and Sources of Recruitment.....	34
8.05 Provisional Appointment.....	35
8.06 Job Announcements.....	35
8.07 Application Forms.....	35

	8.08 Rejection of Application.....	35
	8.09 Examinations.....	35
	8.10 Promotional Examinations.....	36
	8.11 Open Examinations.....	36
	8.12 Conduct of Examinations.....	36
	8.13 Notification of Results.....	36
	8.14 Eligibility List.....	36
	8.15 Appointment From Eligibility List.....	37
	8.16 Re-Employment and Reinstatement.....	37
	8.17 Selection.....	37
	8.18 Physical Examination.....	37
	8.19 Background Examination.....	38
	8.20 Orientation.....	38
	8.21 Outside Employment.....	38
	8.22 Types of Appointments.....	38
RULE 9	PROBATIONARY PERIOD.....	40
Section	9.01 Regular Appointment Following Probationary Period.....	41
	9.02 Rejection of Probationary Employee.....	41
	9.03 Performance Evaluation During Probationary Period.....	42
RULE 10	CHANGES OF EMPLOYMENT STATUS.....	42
Section	10.01 Promotion.....	42
	10.02 Promotion In-House.....	42
	10.03 Requirements for Promotional Candidates.....	42
	10.04 Rejection Following Promotion.....	42
	10.05 Reclassification.....	43
	10.06 Transfers.....	43
	10.07 Conditions for Transfer.....	43
	10.08 Employee Requested Transfers.....	43
	10.09 Employer Initiated Transfers.....	44
	10.10 Voluntary Demotion.....	44
	10.11 Conditions for Layoff.....	44
	10.12 Notice of Layoff.....	44
	10.13 Order of Layoff.....	45
	10.14 Layoff Procedure.....	45
	10.15 Re-Employment List.....	45
	10.16 Termination - Resignation.....	45
	10.17 Exit Interviews.....	45
	10.18 Performance Evaluation.....	45
	10.19 Timing of Performance Evaluations.....	46
RULE 11	DISCIPLINARY ACTIONS.....	46
Section	11.01 Application.....	46
	11.02 Types of Disciplinary Action.....	46
	11.03 Causes for Disciplinary Action.....	47
	11.04 Disciplinary Procedures.....	49
	11.05 Notification of Decision.....	50

	11.06 Appeal of Decision	50
	11.07 Temporary Absence With Pay	50
RULE 12	GRIEVANCE PROCEDURE	51
Section	12.01 Matters Subject to Grievance Procedures	51
	12.02 Notification of Grievance	51
	12.03 Steps in the Grievance Process	51
	12.04 Appeal of Decision	52
	12.05 Advisory Arbitration	52
	12.06 State Mediation	53
	12.07 City Manager	53
	12.08 Extension of Time.....	54
RULE 13	SAFETY.....	54
Section	13.01 No Smoking in City Vehicles	54
RULE 14	HARASSMENT AND DISCRIMINATION PREVENTION.....	54
RULE 15	ATTENDANCE AND ABSENTEEISM	59
RULE 16	ALCOHOL AND DRUG ABUSE POLICY.....	59
EXHIBIT A	Drug Testing Procedure	65

RULE 1 ADMINISTRATION OF PERSONNEL RULES AND REGULATIONS

This manual contains statements of personnel rules and regulations. It is designed to provide the guidelines and procedures regarding personnel issues in the administration of the City of San Juan Capistrano personnel system.

These written rules and regulations should increase understanding, eliminate the need for personal decisions on matters of City-wide policy and help assure uniformity throughout the organization.

The rules and regulations encompassed in this manual are established for all employees as defined in Article 4, Title 2, Chapter 5 of the San Juan Capistrano Municipal Code.

By departmental executive order, Department Heads shall have the authority to develop and adopt additional rules affecting their departments as necessary. Such departmental rules shall be supplementary to these rules, shall be consistent herewith and shall in every case be approved in writing by the City Manager prior to implementation.

In the event of a conflict between what is stated in these Rules and an employee association Memorandum of Understanding (MOU) provision, the MOU provision shall govern. If an MOU is silent on any particular point and/or subject, then the Rules shall govern. This allows for a clear understanding regarding which document governs for a specific benefit or provision. The City acknowledges that there may be practices that exist in the absence of any express language to the contrary, and the City will address such practices as required by law.

Section 1.01 Personnel Officer

The City Manager shall act as Personnel Officer and shall administer the provisions of these rules. The City Manager may delegate the day-to-day administrative responsibilities of the Personnel Officer to any other officer or employee he/she shall so designate.

The Personnel Officer as provided in the Municipal Code shall interpret and apply these rules and may prepare amendments as required.

The Personnel Officer is authorized to establish administrative policies for the purpose of delineating day-to-day operating procedures with respect to general City administration.

Section 1.02 Personnel Records

The Personnel Office maintains the City's official personnel file for each employee. This includes salary history, promotion, evaluations, leaves of

absence, address and other information concerning an employee's status.

The City relies on the employee for information on changes in address, marital status or number of dependents. Any changes must be reported by the employee within 30 days of the effective date of the change to the Personnel Office so that records remain current.

Every appointment, transfer, promotion, demotion, change in salary rate and/or any other temporary or permanent change in status of employee shall be noted on a Personnel Action Form and placed in the employee's official personnel file in the Human Resources office.

Any employee has the right to inspect his/her official City personnel file. If the file contains information that the employee does not agree with, the employee may prepare a separate written response and request that the Personnel Officer place the response in the file.

The personnel record of any person employed by the City will be kept in accordance with the City's records retention policy.

Section 1.03 Protection of Right to Privacy

- A. Access by City Employees. Department Heads shall have access to specific information in an individual's official personnel record, which is necessary to the performance of their assigned City duties. In the event that an employee applies for a position outside the present department, the prospective Department Head shall have access to that employee's file.
- B. Access by Public. The following employment information shall be released to members of the public upon a written request from a member of the public in accordance with the Public Records Act: the individual's name, date of hire, and current position title and confirmation of employee's rate of pay.
- C. Access Required by Subpoena and Other Laws Personnel information contained in the City's official personnel file must be released pursuant to a subpoena or in other circumstances where the City is required by law to release the information. Any questions concerning release of information under such circumstances or concerning records which may be subject to legal privilege shall be directed to the Personnel Officer or designee.

RULE 2 DEFINITIONS

A. General Definition

All words and terms used in these rules and in any resolution or ordinance dealing with personnel policies, systems, or procedures

shall have their ordinary meaning unless specifically defined below.

B. Specific Definition

- Allocation - The assignment of a position to an appropriate class in accordance with its duties and responsibilities.
- Appointing Authority - The City Manager pursuant to Ordinance No. 474. The City Manager may delegate appointing authority to the Assistant City Manager or Executives subject to review.
- At-Will – The employment status of an employee that indicates the appointment may end at any time, without advance notice or right of appeal, and the City is not required to show cause.
- Authorized Position – A position that has been approved and budgeted by the City Council.
- Benefited Part-Time Employee- An employee who regularly works less than thirty-five (35) hours per week and receives benefits, other than sick leave, as specifically set forth in these Personnel Rules and Regulations.
- Classification - A position or group of positions having duties and responsibilities sufficiently similar so that the same requirements as to education, experience, knowledge, and ability may be demanded of incumbents and so that the same schedule of compensation may be made to apply with equity to all.
- Confidential Employee - Employees designated as such by resolution of the City Council, who in the course of assigned duties have access to information relating to the City's administration of employer-employee relations or who assists a Department Head in the processing of confidential materials relating to the performance of employees within a department. Employees currently-designated as confidential employees by the City Manager are those employees currently filling positions allocated to the following classifications:

ADMINISTRATIVE COORDINATOR
COMMUNITY SERVICES MANAGER
BUILDING AND CODE ENFORCEMENT SERVICES MANAGER
EXECUTIVE ASSISTANT
HISTORIC PRESERVATION MANAGER
PUBLIC WORKS MANAGER
WATER ENGINEERING MANAGER
WATER OPERATIONS MANAGER
ALL PERSONNEL IN ADMINISTRATIVE SERVICES DEPARTMENT
ALL PERSONNEL IN THE CITY MANAGER'S OFFICE
INCLUDING CITY CLERK PERSONNEL

- Demotion - The appointment of an employee to a classification having a lower maximum salary range either as a result of a disciplinary action or at the request of the employee.

Voluntary Demotion - Means the appointment of an employee to a classification having a lower salary range at the request of the employee. A voluntary demotion shall be approved in advance and in writing by the Department Head and Personnel Officer. Salary placement of the employee shall be at the step in the new range that is closest to the step the employee is demoting from that does not result in a salary increase.

Involuntary Demotion - Means the appointment of an employee to a classification having a lower salary range as the result of disciplinary action, or “bumping” in- lieu of layoff.

- Department Head - The head of an established department, having supervision of such department.
- Discharge - Disciplinary action involuntarily separating a regular employee from the City.
- Eligibility List - A list of qualified individuals who have achieved minimum rank or score in an examination for employment, re-employment, reinstatement, promotion or transfer.
- Executive Employee - Employees designated as such by resolution of the City Council which are exempt from the disciplinary provisions of the Personnel Rules and Regulations. These positions are at-will and serve at the pleasure of the City Manager.
- Immediate Family - The employee's spouse, registered domestic partner, child, foster child, grandchild, stepparent, legal guardian, stepchild, parent, brother, sister, grandparent, mother-in-law and father-in-law, or-any relative living in the immediate household of the employee.
- Layoff – Separation of an employee from employment with the City in the event, in the judgment of the City Manager, with the approval of the City Council, it becomes necessary to eliminate a position or multiple positions because of the economy or efficiency.
- Management - Employees designated as such by resolution of the City Council and designated in the Memorandum of Understanding of the Management and Professional Employees Association.
- Open Examination – Any recruitment and selection process which invites qualified applicants from the public at large as well as City employees.

- Part-Time Employee – An employee working less than 35 hours per week.

The City will provide benefits to part-time employees only in accordance with the law, or the City may grant additional benefits based on assignment.

A part-time employee hired on or after July 1, 2018, shall be considered at-will, will not serve a probationary period, and can be removed from his or her position without “cause” or providing advance notice or right of appeal. A part-time employee hired on or after July 1, 2018, is not subject to the disciplinary process contained in these Personnel Rules and Regulations and only receives benefits that are explicitly stated as applying to the position, or as authorized by the Personnel Officer or designee.

- Performance Evaluation - Periodic job performance progress reports on all employees indicating strengths and weaknesses and plans for employee development.
- Probationary Employee - An employee who has not completed a probationary period of employment with the City and who is in an at-will status in the position.
- Promotion -The appointment of an employee to a classification with a higher maximum salary.
- Promotional Examination - An internal recruitment and selection process which invites only current City employees as applicants.
- Promotional Probationary Discharge – The involuntary removal of a promotional probationary employee from the promoted position. The affected employee moves back into his/her prior position at the grade and step he or she was at prior to the promotion. If a step increase would have occurred during the promotional probationary period, the employee who moves back into a prior position will be placed at that next step as if the promotion had not occurred. This action (promotional probationary discharge) does not require advance notice or “cause” and cannot be appealed.
- Provisional Appointment – A type of temporary appointment as defined in these rules.
- Reclassification - A change in the allocation of a position by raising it to a higher class, lowering it, or moving it to another class on the same level.
- Re-employment - The appointment of an employee who was laid off within the preceding twelve months to a position in the same classification as the former position.

- Regular Employee - A full-time employee in an authorized position who has successfully completed a probationary period of employment with the City.
A part-time employee hired prior to July 1, 2018 that has passed a probationary period.
- Reinstatement - The appointment of a probationary or regular employee within twelve months after resigning in good standing to a position in a comparable class.
- Resignation - The voluntary separation of an employee from employment with the City.
- Rules and Regulations - The Municipal Code Section 2-5.401 (Personnel System), these Personnel Rules and Regulations, and other rules, policies or procedures that may be set forth in the City Administrative Manual or Departmental rules and regulations.
- Suspension – A disciplinary action by the appointing authority to prevent an employee from working normal hours, thereby exempting the employee from compensation for those hours.
- Termination - The act of separation from employment for any reason other than retirement, discharge, or resignation.
- Transfer - The reassignment of an employee from one position to another position within the same classification or from one classification to another classification which has the same maximum salary and requires substantially the same qualifications.
- Work Period - Period of timing consisting of seven (7) consecutive 24- hours.
- Y-Rated Position - A position which is paid above the maximum of the salary range resulting in the incumbent's salary being frozen until adjustments to the salary range cause the incumbent's salary to fall within the range.

RULE 3 DEPARTMENT RULES

Department Heads shall have the authority to develop and to adopt by departmental executive order such additional personnel rules affecting their departments as shall be felt necessary. Such departmental rules shall be supplementary to these rules, shall be consistent herewith, and shall in every case be approved in writing by the City Manager prior to being put into effect.

RULE 4 FAIR EMPLOYMENT

It is the policy of the City of San Juan Capistrano to assure equal opportunity for all qualified employees and job applicants without regard to race, creed, color, sex, age, national origin, religion, physical or mental handicap, veterans' status, sexual orientation, pregnancy, child birth or related

condition. Positive action will be taken to assure the fulfillment of this policy within the following:

- *Recruiting
- *Hiring
- *Promotions
- *Upgrading
- *Layoffs
- *Compensation
- *Benefits
- *Termination
- *All other terms and conditions of employment

Responsibility for monitoring compliance and implementing the City of San Juan Capistrano fair employment practices is assigned to the Personnel Officer or designee.

RULE 5 CLASSIFICATION PLAN

Position classification is the system whereby positions are classified according to their duties and responsibilities. Positions that are similar in type of work, level of difficulty and level of responsibility are grouped together in a class. All positions in a particular class are treated alike in such matters as salary, examinations and qualifications.

Each position is allocated to a specific classification which is carefully described in a class specification. A class specification shall be prepared for each classification.

The Personnel Officer shall administer and maintain the Classification Plan as approved by the City Council.

Section 5.01 Nature and Contents of Plan

The Classification Plan shall consist of classes of positions defined by class specifications, including title, class summary, examples of duties assigned to positions in each class, and qualifications required of applicants for positions in each class.

Following the adoption of the Classification Plan, the Personnel Officer shall administer and monitor the plan to assure an adequate reflection of the City work force. The review may involve only selected classes or the entire Classification Plan. Subject to approval by the City Council, the Personnel Officer shall recommend the allocation of every position to a class included in the plan.

Section 5.02 Amendment of Classification Plan

Whenever one or more new positions are under consideration for possible establishment, or whenever because of any revision in organization methods, a significant change of the duties or responsibilities of any existing position is made which may require the reallocation of such position, or whenever a new class is created to which any position may more appropriately be allocated, or whenever because of the abolishment or combination of any existing positions, or classes, an amendment of the classification plan is required, one or a combination of the procedures stipulated in the following shall be observed:

- a. The appointing authority shall forthwith report any significant facts relating to such possible changes in writing to the Personnel Officer in the manner prescribed.
- b. The Personnel Officer upon written request of any employee, or upon the Personnel Officer's initiative, after consultation with the head of the department concerned, may undertake any inquiry of the classification of any person.
- c. Upon either of the above initiations, the Personnel Officer shall study the assigned duties and responsibilities of any such position and the qualifications required for filling the same, and the relationships of such positions to other classes of positions in the classification plan. The Personnel Officer shall make an honest attempt to complete this study in a timely manner, typically within six months.
- d. On the basis of such investigation the Personnel Officer shall then make determinations for no change in allocation of the position, or allocation of the position to a more appropriate class in the existing classification or the establishment of the new class to which the position would be allocated, whichever is the appropriate action.
- e. The Personnel Officer shall recommend to the Council any change in the existing classes and class specifications deemed appropriate.

RULE 6 SALARY ADMINISTRATION

Section 6.01 Preparation of the Pay Plan

The Personnel Officer shall prepare a pay plan covering all classifications, showing the minimum and maximum rates of pay. In arriving at such salary ranges, consideration shall be given to:

- a. prevailing rates of pay for comparable work in other public organizations through benchmark surveys;

- b. internal alignments;
- c. current cost of living;
- d. recommendations of City Council and Department Heads; and,
- e. the City's financial condition and policies.

Section 6.02 Pay Plan Structure

The basic pay range of all classifications shall consist of a Basic Compensation Schedule of hourly, bi-weekly and monthly rates. There shall be a five percentage difference between each step in a five step range.

Section 6.03 Entrance Rates on Initial Employment

For permanent, full-time employees, the lowest rate of pay designated for a class shall normally be offered for recruitment purposes and shall normally be paid upon appointment to the class. Upon recommendation of the Department Head, as a result of market conditions such as a shortage of qualified candidates or should a candidate possess exceptional qualifications or experience, a new employee may be assigned to a rate other than the minimum rate. The assignment shall be approved by the Personnel Officer who will determine whether such action is in the best interest of the City. Appointment at other than the minimum shall in no manner affect the length of the probationary period.

Section 6.04 Pay for Temporary and Part-Time Work

Employees designated as "regular, part-time" shall be eligible for pay increases in a manner similar to regular full-time employees based on equivalent numbers of hours worked and given satisfactory performance. Temporary employees shall be eligible for pay step increases as determined by the appointing authority.

Section 6.05 Pay for Probationary Employees

A probationary employee shall be eligible to be considered for a one step (5%) adjustment, contingent upon completion of the probationary period which indicates achievement of "regular employee" status. The adjustment may be made any time after one year of service for management employees only when recommended by the Department Head (through the performance appraisal process) and approved by the Personnel Officer.

Section 6.06 Pay Increases

On each anniversary date an employee shall be eligible for a one step (5%) adjustment until the maximum pay rate of the assigned class is reached. The adjustment shall be implemented upon recommendation by the Department Head and approval by the Personnel Officer. Pay adjustments delayed because of unsatisfactory performance, but granted after the anniversary date, shall affect the anniversary date and date the next pay increase will be considered.

a. Determining the Anniversary Date

The date of the first step increase in a classification, unless or until another probationary period is served in another class, shall be used to determine the employee's anniversary date. The aforementioned date shall be moved up to either the 1st of the month or 15th of the month depending

upon where it occurs within the month. For example, if the date occurs between the first and the 14th, the anniversary date shall become the first of that month, and if the date occurs between the 15th and 31st, the anniversary date shall become the 15th of that month.

Section 6.07 Pay Adjustment Upon Promotion

Upon promotion, an employee's initial placement in the new range is to the nearest step of the new range that is at least 5% higher than the previously assigned rate.

Section 6.08 Pay Adjustment Upon Demotion

When an employee is voluntarily demoted, a mutually agreed-upon pay step in the new range shall be assigned. When an employee is demoted as a result of disciplinary action, the step shall be set by the appointing authority imposing the discipline.

Section 6.09 Pay Adjustment Upon Re-employment

Upon re-employment, an employee shall be assigned the same step in the salary range that had been attained prior to layoff. Benefit accruals shall be equal to the benefit level the employee attained prior to layoff, except as precluded by applicable law.

Section 6.10 Special Merit Pay

A pay adjustment of up to 5% may be granted in advance of an employee's anniversary date in recognition of exceptional performance. The adjustment shall be made in rare cases and shall be recommended by the responsible Department Head and approved by the Personnel Officer, and must be accompanied by a current employee evaluation and memorandum supporting the request. Merit increases shall have no effect upon the anniversary date at which a regular step increase may be considered. This means that an employee whose salary anniversary date is in May and who receives a special merit pay increase in February is eligible for a regular merit step increase in May of that same year.

Section 6.11 Recognition Bonus Pay (See MOU for this benefit for CEA and MPEA)

The City shall grant \$100 recognition bonus for certifications above and beyond requirements of position and used for the benefit of the City. The following list contains several certifications obtainable by City employees and of value to the City.

To qualify for certification, the following parameters must be met:

- o The Certification must be issued by a governing or sanctioning professional body such as America Water Works Association or the American Institute of Certified Planners.
- o The certification must be obtained through a course of study and attaining the qualified skill level proven through testing by the sanctioning body.

- o Certifications that are not on the list of approved certifications below must be approved by the City.

The following list contains several certifications obtainable by City employees and of value to the City:

- i. Playground Safety Inspection Certificate
- ii. Certified Arborist
- iii. Pesticide Applicator and Advisor Certifications
- iv. American Institute of Certified Planners Certification
- v. Certificate in Public Works
- vi. Construction Inspector Certificate
- vii. Certified Municipal Clerk
- viii. Master Municipal Clerk
- ix. International Conference of Building Officials (ICBO) certificates, to include:
 - Plans Examiner
 - Housing Inspector
 - Mechanical Inspector
 - Plumbing Inspector
 - Combination Dwelling Inspector
 - Electrical Inspector
 - Light Commercial Combination Inspector
- x. American Association of Code Enforcement certificates to include:
 - Certified Zoning Enforcement
 - Officer, Certified Housing Enforcement Officer,
 - Certified Code Enforcement Administrator

Section 6.12 Bilingual Pay

Qualified employees who meet the following criteria shall receive a monthly stipend in recognition of their ability:

1. Employee must be assigned by the City Manager or his/her designee to speak and/or translate written material in a language in addition to English. This includes such specialized communication skills as sign language.
2. Employees must, as needed, speak and/or translate a second language.
3. Employees able to communicate and/or translate verbal information shall receive \$85 per month.
4. Employees able to translate verbal and written information shall receive \$125 per month. Employees assigned to translate written information will be required to be

deemed qualified by the City.

The City, at its discretion, may reassign an employee from a bilingual assignment to a position which does not require a bilingual assignment. An employee in a bilingual assignment may request assignment to a position that does not require bilingual assignment. The request shall be made in writing to the City Manager, who will consider it according to the needs and availability of a qualified replacement.

Section 6.13 Acting Appointment Pay (See Employment Practices – Types of Employment – Acting)

Employees given an Acting Appointment for 14 calendar days or more, shall receive Acting Appointment Pay equivalent to the minimum salary rate for that position such that the minimum adjustment would be at least 5% above the employee's current salary, where applicable, with the approval of the Department Head and the Human Resources Manager. Acting Appointment Pay shall be retroactive to the first day of an acting assignment and subject to no additional benefits.

An Acting Appointment shall generally be less than 12 months duration. Extension beyond 12 months shall be subject to the approval of the City Manager. If the position, or the employee, is one that falls under representation by one of the City's recognized employee associations, the appropriate association shall be informed of the extension and the reasons for the extension.

Section 6.14 Payroll Deductions

The City will deduct from the employee's periodic paycheck, all mandatory deductions required by law and voluntary deductions requested by the employee. Each paycheck will be accompanied by a statement itemizing salary deductions.

Section 6.15 Work Day and Work Week

The official work week of the City of San Juan Capistrano shall be forty (40) hours from Friday at mid-workday to the following Friday at mid-workday for most full-time employees. The official City Hall operating hours shall be Monday through Thursday from 7:30 a.m. to 5:30 p.m. and Fridays from 7:30 a.m. to 4:30 p.m., with alternate schedules to meet Department operations or to meet special employees' needs due to transportation or caregiver issues.

It shall be the duty of each Department Head to arrange the work of the department so that each employee therein shall work not more than five (5) consecutive days in each calendar week except that a Department Head, with approval of the City Manager, may require any employee in the department to temporarily perform service in excess of eight (8) or (9) hours per day or five (5) days per week when public necessity or convenience so requires. Department Heads will not temporarily change an employee's regular work schedule to avoid payment of overtime.

Section 6.16 Flexitime

A flexible work schedule may be developed and implemented whereby designated employees may be allowed to work a total of eighty hours within a two-week period regardless of the number of hours worked per day, subject to approval of the Department Head and Personnel Officer. The flexible work schedule shall be maintained as long as the needs of the public and City are explicitly met.

Designated employees may be allowed to work four (4), ten (10) hour days in a work period or work a 9/80 schedule.

Section 6.17 Management Flexitime

Management personnel may flex their schedule as needed during the pay period to allow for required attendance at extraordinary events or meetings or unscheduled or emergency situations. This option allows the management employee to operate with professional flexibility. Use of flexitime will require prior approval by the Department Head. Use of a flexitime schedule which would extend beyond one pay period will require prior approval by the Department Head and City Manager.

Section 6.18 Overtime (See MOU for classifications represented by CEA)

Whenever, at the discretion of the appointing authority, an employee works beyond forty (40) hours in a work period, such person shall be compensated for such overtime work to the nearest 15 minutes at time-and-one-half his/her regular compensation, or receive compensatory time off earned at time-and-one-half rate. Whenever, at the discretion of the appointing authority, an employee works beyond twelve (12) hours in one work day, such person shall be compensated for such overtime beyond the normally-scheduled hours (e.g., 9 in the case of an employee who works 12 hours on a regularly-scheduled 9-hour day) to the nearest 15 minutes at double the rate of his/her regular compensation, or receive compensatory time off earned at double rate. Compensation for overtime shall be in the form of either cash payment or compensatory time off at the discretion of the Department Head with due regard for the wishes of the employee and particular regard for the needs of the City.

Vacation (except when used in-lieu of sick leave), holiday and comp time shall count towards hours worked for the calculation of overtime.

The employee may accumulate and hold for future use no more than 120 hours at any one time of compensatory time (CEA members may accumulate hours, in accordance with the CEA MOU) and, at the end of the fiscal year, may carry over no more than 80 hours of compensatory time for use in the next fiscal year. (The carry-over limit for CEA members is noted in the CEA MOU.) Compensatory time may only be cashed out at original rate of accrual. All other overtime hours accumulated to that point shall be paid at the end of the fiscal year. Such compensatory time off is subject to approval of the Department Head and Personnel Officer.

Overtime requested by an employee to adjust the employee's work schedule shall be considered flex time and is not subject to compensation at the rate of time and one-half.

Generally, overtime shall be assigned/offered to full-time employees before being assigned/offered to part-time or temporary employees.

The City shall assign overtime with due regard to an equitable and fair distribution of work, whenever possible.

Section 6.19 Emergency Stand-By/Call Out (See MOU for classifications represented by CEA)

Section 6.20 Work on a Holiday

Any full-time employee who is required to work on a recognized or an observed holiday shall be entitled to be paid for the holiday plus time-and-one-half for all hours worked on the holiday or compensatory time off at time-and-one-half. The decision of whether an employee is paid or is given compensatory time off shall be made by the employee.

Section 6.21 Flexible-Staffing

The non-competitive promotion of an employee from certain designated classifications in a classification series to certain higher-level classifications in the same classification series. An employee promoted to a flexibly-staffed position shall serve a promotional probationary period in accordance with these rules.

The salary of an employee whose position is reclassified due to flexible staffing, pursuant to the provisions of this rule, shall be determined as follows: After the successful completion of at least twelve (12) months of continuous City service with satisfactory evaluations, and a determination that the job assignments may warrant a reclassification, upon the Appointing Authority's recommendation and Human Resource Director's approval, in lieu of a merit step increase, the employee may be moved to the nearest step of the agreed-upon higher position which grants the employee no less than a five percent (5%) increase in compensation. The employee's salary anniversary date shall change and he/she shall be required to serve a new probationary period.

6.22.1 Flexibly Staffed Classifications.

The following classifications are flexibly staffed:

Office Assistant/Administrative Specialist/Administrative Coordinator
Public Works Specialist I/II
Accounting Clerk/Accounting Specialist
Utilities Operator Trainee/Utilities Operator I/II (including GWRP)
Assistant Planner/Associate Planner
Assistant Engineer/Associate (Civil) Engineer

Positions may be filled at the entry level. This rule (6.22.1) does not prevent the

City from identifying certain positions that contain primarily routine tasks that will preclude the position from moving from the entry level to a higher level. This rule does not guarantee that a position will be reclassified in accordance with the provisions of this rule.

RULE 7 EMPLOYEE BENEFITS

Section 7.01 Vacation Accrual and Use

- a. Executive Employees
Executives accrue Vacation leave annually, based on an accrual rate approved by the City Council. Vacation leave may be accumulated on an unlimited basis.
- b. Management Employees (See Management and Professional Employees Association Memorandum of Understanding)
- c. Classified Employees (Non-Management) (See Classified Employees Association Memorandum of Understanding)
- d. Part-time Employees
Part-time employees hired prior to July 1, 2018, shall be eligible to accrue vacation credit on a pro-rated basis based on the number of hours worked (i.e., 20 hours per week equals one-half vacation accrual rate). Part-time employees hired on or after July 1, 2018, shall not accrue Vacation leave, except as authorized by the City Manager or designee.

Accrual of Vacation Time

The maximum amount of vacation time which may be accrued shall be 300 hours.

Appointment from Part-Time to Full-Time

Upon appointment to full-time employment, employees shall accrue vacation at the rate of 80 hours annually. Increases in the accrual rate shall be based upon length of service in a full-time capacity.

Section 7.02 Vacation Usage

The time during the calendar year at which an employee may take vacation leave shall be determined by the Department Head but with due wish of the employee and particular regard for the needs of the City. Eligible employees shall accrue vacation beginning with the date of hire.

Section 7.03 Vacation and Comp Time Benefits for Terminating Employees

Upon separation from employment, the employee shall be paid for any accrued vacation leave and compensatory time which has accrued and is unused within the limits specified above (or what is outlined in the CEA MOU, if the

employee's position is represented by CEA).

Section 7.04 Holidays Occurring During Vacation

When one or more legal municipal holidays fall within a vacation leave, such day or days shall not be charged as the vacation leave.

Section 7.05 Holidays

Represented employees, part-time employees hired prior to July 1, 2018, and Executive employees shall have the following holidays with pay and shall not be required to work on such holidays except as hereinafter provided:

- a. January 1st (New Year's Day)
- b. Third Monday in February (Washington's Birthday)
- c. Last Monday in May (Memorial Day)
- d. July 4th (Independence Day)
- e. First Monday in September (Labor Day)
- f. November 11th (Veteran's Day)
- g. Fourth Thursday in November (Thanksgiving Day)
- h. The day following Thanksgiving Day
- i. December 24th (Christmas Eve)
- j. December 25th (Christmas Day)
- k. December 31 (New Year's Eve Day)
- l. Floating Holiday (20 hours annually, credited the first full pay-period in July)

Benefited part-time employees hired prior to July 1, 2018, shall receive holiday pay based on the following schedule and subject to the average number of hours worked per week during the prior fiscal year:

- 2 hours for anyone working 10-19 hours per week
- 4 hours for anyone working 20-29 hours per week
- 6 hours for anyone working 30-39 hours per week

Part-time employees hired on or after July 1, 2018, are not eligible for holiday pay.

Whenever a holiday falls on a Sunday not scheduled as a regular work day, the following Monday shall be observed as the holiday. Whenever a holiday falls on a Saturday not scheduled as a regular work day, the City will recognize the holiday on a case-by-case basis and observe it either on the preceding Friday or the Monday after the holiday, based on the needs of the community. The determination of the holiday observance will be made when the City issues the master holiday schedule each year.

Employees on a 9/80 schedule will be able to bank holiday hours for those holidays that occur on their flex day off. The following shall apply to the use of Holiday banked hours:

- Banked hours will be capped at 24
- Hours banked are not compensable - they cannot be cashed out
- Banked hours must be used before any other kind of leave, except for sick leave
- Employees will be strongly encouraged to use banked hours within a reasonable period of time, preferably by the end of each fiscal year.
- Banked hours will be paid out prior to an employee receiving any type of increase in compensation.

An employee must have been in a paid status for the entire amount of regularly-scheduled hours of the work day immediately prior to and the work day immediately following a City holiday in order to be paid holiday pay.

Section 7.06 Floating Holiday

Probationary and regular full-time employee shall be credited with a total of twenty (20) hours of compensated time off on July 1st of each year. The time(s) which the employee may elect to use this leave shall be arranged with and approved by the employee's supervisor. The floating holiday hours must be used prior to June 30th or shall be forfeited.

Employees hired on July 1st through September 30th receive twenty (20) hours of floating holiday, employees hired on October 1st through December 31st receive fifteen (15) hours of floating holiday, employees hired on January 1st through March 31st receive ten (10) hours of floating holiday, and employees hired on April 1st through June 30th shall not receive floating holiday.

Part-time employees are not eligible for Floating Holiday.

Section 7.07 Sick Leave

Sick leave shall mean the time during which an employee is permitted to be absent from the duties of City service by reason of sickness or injury which incapacitates or prevents the employee from performing assigned duties, without any deduction being made from salary or compensation, and shall include, in certain cases, serious illness or death of a member of the employee's immediate family.

It will be the responsibility of the Department Head to periodically review the use of sick leave in the department. Abuse of sick leave may be used as a factor in determining employee performance for employee evaluations. The legitimate use of FMLA qualified sick leave shall not be used as a factor in determining employee performance for evaluation.

Section 7.08 Sick Leave Allowance

All regular and probationary full-time employees shall be entitled to eight (8) hours sick leave for each calendar month of service. There shall be no limit on the amount of sick leave which may be accumulated. Part-time and temporary employees may accumulate sick leave on a pro-rated basis, based on the

hours worked.

Section 7.09 When Sick Leave May Be Taken

Sick leave may not be used until it is earned and shall be taken only in case of actual and necessary sickness or disability of the employee, or in accordance with law. Eligible employees may utilize a maximum of ninety-six (96) hours of accumulated sick leave with pay in the event of 1) the employee's presence is required elsewhere because of family medical and dental appointments, serious illness, injury, disability or death of a member of the employee's immediate family; 2) official order to appear in court as a litigant or as a witness; and 3) personal necessity as defined and limited below.

Sick leave shall not be used in lieu of or in addition to vacation for the intent of extending vacation. When an employee is compelled to be absent from employment by reason of injury arising from and in the course of City employment as determined by the Workers' Compensation law, the employee may elect to apply accrued sick leave, if any, in such amount that when added to Workers' Compensation benefits equals the employee's gross salary. Earned vacation time and compensatory time off may be utilized in a similar manner.

Personal necessity leave can be used by a regular full-time or Executive employee at a rate of 24 hours per fiscal year for absences other than illness or disability and the absences shall be deducted from accumulated sick leave. Sick leave or personal necessity leave is not intended for taking care of personal business which could be taken care of at another time.

Initial probationary, part-time and temporary employees are not eligible for Personal Necessity leave.

Personal necessity is considered to be:

- a) a personal matter that requires your attention which cannot be taken care of except during normal working hours; or
- b) a matter that requires your attention, such as a hot water heater flooding your home, fire, robbery; or

The nature of the personal necessity need not be disclosed in writing on the Absence Request Form, but it shall be discussed with the employee's Supervisor or the Personnel Officer or designee. This information shall be treated confidentially by all parties involved.

Section 7.10 Notification of Illness by Employee

Except in emergency situations, an employee on sick leave shall notify his/her supervisor no later than the beginning of the assigned workday. When on FMLA leave, the employee will be required to notify the City in compliance with the Family Medical Leave Act.

Section 7.11 Return From Sick Leave

Upon returning from sick leave, a physician's certificate may be required if, in the opinion of the Department Head, it appears that an employee is abusing sick

leave privileges or to determine the validity of the employee's absence during the time for which sick leave was requested.

Any employee absent from duty on sick leave for three (3) consecutive work days due to illness or accident may, at the discretion of the Department Head, be required to submit to a physical examination by a physician designated by the City, and at City expense, to determine fitness to return. Fitness to Return Report shall be the property of the City.

Section 7.12 Sick Leave Payout Prior to Separation of Employment

At the employee's request, the City will compensate in cash or in time off for unused sick leave accrued above 288 hours. The compensation formula will be consistent with the payout levels established in Section 7.13 of the Personnel Rules, based upon years of service.

Employees with greater than 288 hours of sick leave and who have used two (2) days or fewer of sick leave in the previous fiscal year shall have the right to cash-out up to two days of sick leave at 100% the following July 15th.

In addition to the above provision, Management employees shall be allowed to:

- a) cash out sick leave above 200 hours at the rate of 50%;
- b) convert hours accrued beyond 300 to deferred compensation, as they accrue them each pay period, at their current sick leave cash out rate, shown in Section 7.13.
- c) convert up to three days (24 hours) of sick leave to vacation if they've used 16 hours or less of sick leave in one year (July 1 - June 30), at their current cash out rate, shown in Section 7.13.
- d) convert up to five (5) days of unused sick leave to a Deferred Compensation account at the end of each fiscal year, at their current cash out rate. Following such conversion, the employee must have a minimum balance of eighty (80) hours in their sick leave account.

Section 7.13 Sick Leave Cash-Out Upon Separation of Employment

City employees hired before July 1, 1999, who separate employment with the City shall be compensated in cash for unused sick leave at final rate of pay based on the following:

Less than 2 years	None
2 to less than 15 years	50%
15 to less than 20 years	75%
20 or more years	100%

Employees hired on or after July 1, 1999, shall abide by the following sick leave cash out schedule:

Less than 2 years	None
More than 2 years	50%

There shall be no maximum amount of unused sick leave eligible for cash compensation subject to the foregoing schedule.

OTHER LEAVES OF ABSENCE

Section 7.14 Community Service Leave

Each Management and Executive employee shall be granted up to four (4) hours paid leave per month to undertake community service at approved non-profit, charitable or community service organizations.

Section 7.15 Bereavement Leave

An employee shall be granted a leave without loss of pay in case of death of a member of the employee's immediate family. Such leave is designated as bereavement leave. Up to five (5) days leave without loss of pay shall be granted for the death of a member of the employee's immediate family.

Immediate family as used in this section is defined as the employee's spouse, registered domestic partner, child, foster child, grandchild, stepparent, legal guardian, stepchild, parent, brother, sister, grandparent, mother-in-law, father-in-law and grandparents-in-law; or:

- a. Any other relative by blood or marriage who is a member of the employee's household. (Employees may be required to submit proof that the deceased relative was a member of the employee's household prior to the time of death.)
- b. Any other relative of the employee by blood or by marriage where it can be established by the employee that as a result of such relative's death, the employee's presence is required to handle funeral arrangements and/or matters of estate.

In addition, bereavement leave may be granted on a case by case basis under other circumstances at the discretion of the City Manager when it is in the best interest of the City to do so.

Time off beyond these parameters shall be charged to any type of available leave. Bereavement leave shall only be available to Executives and regular and probationary full-time employees.

Section 7.16 Jury Duty Leave

Regular and probationary employees and Executives who are summoned to

serve on jury duty or subpoenaed as a witness in any court in this State of the United States, or any administrative board of tribunals, shall be entitled to a leave of absence with pay while serving. Employees may keep fees and fees for mileage received while serving. Employees must return to work if not required to attend jury duty on a particular day. An employee who is released from jury duty with four hours or more remaining in his or her normal work day shall report to their supervisor. Reporting back means that the employee has contacted his/her supervisor via a phone call (not a voicemail message), text, or email, and received a response back from the supervisor.

Section 7.17 School Activity Leave

Pursuant to California Labor Code Sections 230.7 and 230.8, parents, guardians and grandparents having custody, of school-age children shall be allowed leave from their jobs, with or without pay, as may be necessary to participate in school activities such as parent-teacher conferences, disciplinary matters, school programs and related events with their children. Such leave is limited to 40 hours per school year, at a maximum of 8 hours per month. Employees must give reasonable advance notice to the employer to permit work coverage, and may be required to provide documentation from the school that the employee participated in the activity on the specific date and time. Leave properly requested in advance shall not be denied.

Section 7.18 Family and Medical Leave Policy

In accordance with the Federal Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA), the City will grant family and medical leave to eligible employees. Any employee employed continuously for at least twelve (12) months and who has been employed for at least 1,250 hours during the twelve (12)-month period immediately preceding the commencement of the leave, is eligible for leave. A leave may be granted for any of the following reasons:

1. The birth of a child or to care for a newborn of an employee;
2. The placement of a child with an employee in connection with the adoption or foster care of a child;
3. Leave to care for a child, parent or a spouse who has a serious health condition;
4. Leave because of the employee's own serious health condition that makes the employee unable to perform the functions of his/her position; or
5. 26 weeks for an injured military service member, as required by law.

7.18.1 Amount of Leave.

7.18.1.1 Eligible employees are entitled to a total of twelve (12) weeks of leave during a twelve (12) month period. The twelve (12) month period is calculated by using the date the leave has been requested and looking back twelve (12) months from that date.

7.18.1.2 If leave is requested for the birth, adoption or foster care placement of a child of the employee, leave must be concluded within one year of the birth or placement of the child. In addition, the basic minimum duration of such leave is two weeks. However, an employee is entitled to leave for one of these purposes (e.g. bonding with a newborn) for at least one day, but less than two weeks duration on any two occasions.

If leave is requested to care for a child, parent, spouse or the employee's own serious health condition, there is no minimum amount of leave that must be taken. However, the notice and medical certification provisions of this policy must be complied with.

7.18.1.3 Both Spouses Employed by the City:

If both spouses are employed by the City, they are entitled to individual leave of twelve (12) workweeks except in the following cases:

The aggregate number of workweeks of leave to which both may be entitled is limited to twelve (12) workweeks during any twelve (12) month period if leave is taken for the birth or placement for adoption or foster care of the employees' child. This limitation does not apply to leave taken by their spouse to care for the other who is seriously ill and unable to work, or to care for a child or parent with a serious health condition or for the employee's own illness.

7.18.1.4 Employee Leave Benefits While On Family Leave:

While on leave under this policy, the City of San Juan Capistrano will require an employee to concurrently use paid accrued leaves after requesting FMLA and/or CFRA leave, to the extent allowed by law. Whenever the City determines that a leave is FMLA or CFRA qualifying, the City will place the employee on leave. Once the available paid leave accruals are exhausted, the employee will be on authorized leave without pay.

Employees shall use paid sick leave accruals if they are on leave due to their own serious health condition. Once sick leave is exhausted, employees shall use other paid leaves which they have earned such as vacation, floating holiday, and compensatory time.

Employees shall use paid vacation, special leave, floating holiday,

and compensatory time if on leave due to a family member illness or qualifying situation.

7.18.1.5 The leave will not constitute a break in service for purposes or longevity, seniority of any benefit plans.

7.18.1.6 Employee Health Insurance Coverage:

The City will continue to pay its portion of the employee's health insurance premiums for the twelve (12) weeks. The employee is responsible to pay his/her portion of the health insurance premiums. If the employee does not return to work after the conclusion of the family leave, the City may recover its share of the health insurance premiums during the period of the unpaid family care leave, as provided by law.

7.18.1.7 Employees may make the appropriate contributions for continued coverage for voluntary, non-health benefit plans by payroll deductions or direct payments made to these plans. Depending on the particular plan, the Human Resources Manager will inform you whether the premiums should be paid to the carrier or to the City of San Juan Capistrano.

Coverage on a particular plan may be dropped if you are more than 30 days late in making a premium payment. However, you will receive a notice at least fifteen (15) days before coverage is to cease, advising you that you will be dropped if your premium payment is not paid by a certain date. Employee contribution rates are subject to any change in rates that occurs while the employee is on leave.

7.18.1.8 The FMLA and CFRA leave provisions shall run concurrently in all cases where applicable.

7.18.1.9 An employee may also qualify for the provisions of the California Pregnancy Disability Leave Law. The amount of pregnancy disability leave can be up to four (4) months with verification of continued disability from a physician. This leave is in addition to the FMLA and CFRA leave.

7.18.2 DEFINITIONS:

12-MONTH PERIOD - means a rolling twelve (12) month period measured backward from the date leave is taken.

CHILD - means a child under the age of eighteen (18) years of age or older child who is incapable of self-care because of a mental or physical disability. An employee's child is one for whom the employee has actual day-to-day responsibility for care and includes, a biological, adopted, foster or step-child.

PARENT - means the biological parent of an employee or an individual who stands or stood in place of a parent to an employee when the employee was a child. This term does not include parents-in-law.

SPOUSE - means a husband or wife as defined or recognized under California State law for purposes of marriage.

KEY EMPLOYEE - a salaried employee whose salary is among the highest ten percent (10%) of the City's employees.

SERIOUS HEALTH CONDITION - under the FMLA and CFRA, an illness, injury, impairment or physical or mental condition that involves the following is included:

1. Inpatient Care: an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity (e.g. inability to work or perform other regular daily activities due to the serious health condition, treatment involved, or recovery therefrom,) or
2. Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:
 - a) A period of incapacity (i.e. inability to work, or perform other regular daily activities) due to serious health condition of more than three consecutive full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - Treatment two or more times within 30 days from the health care provider, by a nurse or physician's assistant under direct supervision by a health care provider, or by a provider of health care services under orders of, or on referral by a health care provider. The first medical visit must take place within seven (7) days of the first day of incapacity; or
 - Treatment by a health care provider on at least one occasion within seven (7) days of the first incapacity which results in a regimen of continuing treatment under the supervision of the health care provider. This includes a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over the counter, and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment.

- b)** Any period of incapacity due to pregnancy or for prenatal care. (This entitles the employee to FMLA leave, but not CFRA leave. Under California law an employee disabled by pregnancy is entitled to pregnancy disability leave.)

- c)** Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
 - 1. Requires periodic visits for treatment by a health care provider, at least twice a year for the same condition, or by a nurse or physician's assistant under direct supervision of a health care provider; and
 - 2. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - 3. May cause episodic rather than a continuing period of incapacity such as asthma. Absences for such incapacity qualify for FMLA leave even if the absence last only one (1) day.
 - 4. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective; the person must be under continuing supervision by the health care provider; or
 - 5. Any period of absence to receive multiple treatments by a health care provider for restorative surgery after an accident or other injury, or for such conditions as chemotherapy which would likely result in a period of incapacity of more than three (3) days.

- d)** A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by a health care provider.

- e)** Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity or more than three (3) consecutive calendar days in the absence of medical intervention or treatment.

HEALTH CARE PROVIDER - includes a medical practitioner; physician's assistant, clinical social worker authorized to practice under State law and performing within the scope of his/her practice; any health care provider from

whom an employer or group health plan's benefits manager who will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and a health care provider who practices in a country other than the United States, who is license to practice in accordance with the laws and regulations of that country.

7.18.3 Procedure.

Requests for family leave of absence shall be made in writing by filling out the appropriate form and submitting it to Human Resources. The request shall state specifically the reason for the request, the date when it is desired to begin the leave and the probable date of return. Requests for leave under FMLA and CFRA do not require a statement identifying the condition necessitating the leave. The Human Resources Office will notify the employee that the leave has been designated as applicable leave.

The City may designate as qualifying leave a workers' compensation injury which also constitutes a serious health condition. Thus, the employee receives both the workers' compensation benefits and the leave benefits under this section.

7.18.4 Leave Increments.

The leave must be taken in increments of at least one hour for recurring medical treatments certified by a health care provider. However, where leave is taken because of the birth or the placement of a child for adoption or foster care, intermittent leave or leave on a reduced schedule may only be taken if approved by the City.

7.18.5 Continuation Of Benefits During Leave Of Absence Without Pay.

The City shall request certification from the attending health care provider to verify the serious health condition of a family member. Such certification should include the following statements:

- Date on which the serious health condition commenced;
- Probable duration of the condition;
- In the case of caring for a family member, an estimate of the amount of time the employee needs to care for the individual;

- That the serious health condition warrants participation of a family member to provide care during the period of treatment.

7.18.6 Employee Notice of Leave. Although the City of San Juan Capistrano recognizes that emergencies arise which may require employees to request immediate leave, employees are required to give as much notice as possible of their need for leave, as required by law. If an employee's need for a family care leave is foreseeable, due to a planned medical treatment or planned supervision of a child, parent or spouse with a serious health condition, an employer may require the employee to provide reasonable advance notice of the need for the leave and to consult with the City regarding the scheduling of the treatment or supervision so as to minimize disruptions to the operation of the City. Any such scheduling, however, shall be subject to the approval of the health care provider of the child, parent or spouse.

7.18.7 Right to Reinstatement. Upon expiration of an authorized leave, an employee is entitled to be reinstated to the position of employment held when the leave commenced, or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Employees have no greater rights to reinstatement, benefits and other conditions of employment than if the employee had been continuously employed during the FMLA/CFRA period. Reinstatement provisions are not applicable if the position is eliminated as a result of a reduction in force or elimination of service while the employee is out on leave.

Whenever possible, a reinstatement date will be discussed at the beginning of the leave. If no date has been agreed upon at the beginning of the leave, or if the reinstatement date differs from the original agreement, an employee may be reinstated as soon as possible after the employee notifies the City of his/her readiness to return.

7.18.7.1 Reinstatement of Key Employees. The City cannot deny family care leave, but reinstatement can be denied to a key employee who is among the highest paid ten percent (10%) of the City's employees. A denial for reinstatement may be given if it is necessary to prevent substantial and grievous economic injury to the operations of the City. The City will notify the

employee of the intent to refuse reinstatement at the time the City determines that refusal is necessary to prevent substantial and grievous economic harm to the City.

7.18.8 Fitness For Duty Certification. An employee whose leave was due to the employee's own serious health condition shall provide the City with a Return to Work release from the health care provider certifying that the employee is able to resume work. Reinstatement may be delayed until the City receives the certification.

7.18.9 Submittal of Forms. The request for family leave shall be submitted on forms provided by the City.

Section 7.19 Military Leave

Military leave shall be granted in accordance with the provisions of State and Federal law. All employees applying for military leave shall give the Department Head, within the limits of military regulations, an opportunity to determine when such leave shall be taken. Employees may use compensatory time and vacation time for weekend drills.

Section 7.20 Leave of Absence Without Pay

Leave of absence without pay may be granted in advance by the Personnel Officer, or his or her designee, upon recommendation of the Department Head. No such leave shall be granted except upon written request of the employee, setting forth the reason for the request. All requests shall be evaluated on basis of personal need, duration and work requirements. Any leave of absence without pay lasting more than fourteen (14) calendar days shall preclude employee from accruing leave time and other benefits after the 14th day.

During such a leave of absence, the employee shall continue to be responsible for payment of all health-related employee share of premiums (medical, dental, vision) that the employee was required to pay prior to such leave, and it is the employee's responsibility to submit payment to the Finance office on each payday that the premium would have typically been paid by the employee.

Section 7.21 Administrative Leave

Refer to Management and Professional Employees Association Memorandum of Understanding.

Executive employees shall accrue 80 hours administrative leave per year. There is unlimited accrual of this leave, and Executive Employees may buy back up to 80 hours of administrative leave if the leave hours remain at the end of the fiscal year. This leave is compensable upon separation.

Section 7.22 Administrative Compensation

Employees exempt from the Fair Labor Standards Act are expected to work the hours necessary to complete the requirements of the position. In certain major emergency and/or disaster circumstances as declared and approved by the City Manager or designee, exempt employees may be eligible to receive additional compensation (as determined by the City Manager) for emergency/disaster response, including, but not limited to, major fires, floods, earthquakes, terrorism events, or other natural or manmade disasters. The City Manager's decision cannot be appealed or grieved. The City shall make reasonable efforts to provide meals, food, and shelter for all employees and volunteers responding to such incident(s), or the City may reimburse an employee or volunteer for reasonable expenses, as determined by the City Manager or designee.

Section 7.23 On-the-Job Injury Leave

Whenever an employee is compelled to be absent from active duty due to an injury disability arising out of and in the course of employment, such employee shall be entitled to receive an On-the-Job Injury Leave With Pay for up to the first three consecutive days of such absence. The granting of such leave shall be conditioned upon the following:

- a) the absence is at the discretion of a licensed medical physician or other designated health care professional.
- b) supervisory personnel have been properly notified of such injury or disability and an on-the-job injury report has been properly completed and submitted.
- c) the injury occurred while the employee was performing work duties on the job.

Whenever the On-the-Job Injury Leave extends beyond the first three days, the employee will be allowed to use accrued leave to supplement the Workers' Compensation allowance to achieve the equivalent of 100% of his/her salary.

Section 7.24 Compensation For Job Connected Illness or Injury

In accordance with Workers' Compensation laws, the City provides protection for employees in the event of on-the-job injuries. If an

employee is injured on the job, the injury must be reported immediately to the supervisor - no matter how minor it seems. If necessary, the employee should receive first aid or medical treatment. Detailed instructions shall be given to the employee to initiate a Workers' Compensation claim as necessary. The Personnel Officer or his or her designee shall assure that required forms are completed in a timely manner.

Section 7.25 Non-Work Related Disability Leave

If an employee is compelled to be absent from active duty due to a non-work related disability or accident, the City shall grant a leave of absence in accordance with state disability laws. The City provides short and long-term disability insurance coverage to assist an individual when this situation arises.

Section 7.26 Unauthorized Absence

A City employee who without prior authorization is absent or fails to discharge regularly assigned duties for a period of twenty-four (24) consecutive work hours shall be considered to have abandoned the job and may be subject to disciplinary action, including discharge.

OTHER BENEFITS

Section 7.27 Medical, Life, Vision and Dental Insurance (See applicable MOUs for represented classifications)

The City provides medical, life, vision and dental insurance for City employees. The insurance becomes effective the first day of the month following date of hire, as long as the employee submits the proper paperwork to the Human Resources Office within three business days before the first of the next month.

Insurance coverage is included in the applicable MOU or resolution. Questions regarding coverage, forms and other matters pertaining to the insurance program should be directed to the Human Resources Office.

Section 7.28 COBRA

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) requires that the group health plans provide employees and their dependents the opportunity to continue health care coverage under the plan in certain circumstances where coverage under the group health plan would otherwise terminate. While the City must make continued health coverage available, it can charge qualified beneficiaries up to 102% of the cost of coverage if continuation of benefits under the group plan is desired.

Section 7.29 Retiring Employee Recognition Program

The Retiring Employee Recognition Program provides for a salary incentive for long term City service. The guidelines and definitions for this program are detailed in the Administrative Policy Manual.

Section 7.30 Retirement Plan

Enrollment in the Orange County Employees Retirement System (OCERS) is governed by rules set forth by OCERS.

Section 7.31 Short-Term/Long-Term Disability Insurance

Eligible employees may receive short-term/long-term disability coverage or income protection of up to two-thirds of salary during disability periods due to non-job related injury or illness up to a maximum percentage of salary.

Section 7.32 Deferred Compensation Program

Employees may elect to have a portion of their salary withheld from their paycheck on a pre-tax basis and deposited into the employee's 457 Plan account. Contact the Human Resources Office to enroll.

Section 7.33 401(a) Deferred Compensation Program

The City shall establish a 401(a) deferred compensation program through ICMA, subject to the provisions allowable under current regulations for this type of program.

Section 7.34 Educational Reimbursement

The City's annual educational reimbursement for an employee shall be up to a maximum of \$5,000/year for a degree from an accredited college or university or certificate program, with no maximum benefit during employment.

Eligible expenses may include: application/registration fees; tuition; required textbooks, supplies and materials; laboratory fees; and required student health and/or association fees. Incidental expenses such as transportation, parking, meals and paper supplies are not eligible for reimbursement.

Employees who receive reimbursement funds under this program shall be required to agree in advance that if the employee terminates employment with the City within eighteen months following the date of course completion, all funds reimbursed for such course work shall be repaid to the City by the employee.

City will provide up to \$20,000 annually for all employees to

participate in the program and carryover any remainder to the following fiscal year up to a total pool amount of \$35,000. If annual requests exceed the amount available, amounts would be pro-rated based on requests on a first come, first served basis.

The Personnel Officer or designee shall have authority regarding courses of study eligible for reimbursement. Unless otherwise deemed appropriate, only regular full-time employees may be eligible to elect to take courses which will benefit their positions with the City. Upon authorization, employees shall complete the course with a passing grade (defined as a "C-" or better) and fulfill requirements set forth by the Personnel Officer or designee in order to receive reimbursement.

Guidelines and requirements pertaining to the reimbursement program are covered in detail in the Administrative Policy Manual, and relevant Memorandum of Understanding.

Section 7.35 Ride Share Program

Employees who carpool, walk, bike, take the bus or the train to and from work at least twice per week shall, at the end of the fiscal year, be eligible for nine (9) hours of additional floating holiday time in the next fiscal year.

Section 7.36 Mileage Reimbursement

Management and Classified employees shall receive mileage reimbursement in accordance with IRS standards and any applicable MOU.

Section 7.37 Auto Allowance

Management employees shall receive auto allowance in accordance with their MOU. Executive employees shall receive auto allowance as approved by the City Council.

Section 7.38 Lunch and Break Periods

Because of varying work shifts, flextime and job conditions, lunch and break periods are scheduled with the supervisor. Typically a one-hour or one-half hour lunch break is provided. Two break periods of fifteen (15) minutes each are also allowed. Break periods cannot be accumulated.

Section 7.39 IRS Code Section 125 Plan

The City will provide employees the opportunity to participate on a voluntary basis in a Dependent Care Assistance Program (Section 129) under Internal Revenue Code Section 125, which allows

employees to redirect part of their salary, before it is taxed, to be used for child, elderly and dependent care, and eligible medical expenses.

RULE 8 EMPLOYMENT PRACTICES

Section 8.01 Fair Employment Practice

The City of San Juan Capistrano assures any technique or procedure used in recruitment and selection of employees shall be designed to measure only the job-related qualifications of applicants. No recruitment or selection technique shall be used which, in the opinion of the Personnel Officer or designee, is not justifiably linked to successful job performance. It is the policy of the City that no technique, procedure or policy in recruitment and selection shall be discriminatory to any group protected by state or federal legislation.

Section 8.02 Non-Discrimination Policy

The City shall offer equal employment opportunities to all persons without regard to race, creed, color, sex, age, national origin, religion, physical or mental handicap or veterans' status. No applicant is to be discriminated against or given preference because of these factors. This policy is intended to apply to recruiting, hiring, promotions, upgrading, layoffs, compensation, benefits, termination and all other privileges, terms and conditions of employment.

Section 8.03 Hiring Relatives

No member of the immediate family of the City Manager or any City Council member shall be appointed to any position, whether full or part-time, in the City work force. The hiring of relatives of City employees is permitted.

However, employees who are relatives must be employed in different departments within the City. In no case will it be allowed that one relative directly supervise another. Relatives of employees shall neither be given preference nor discriminated against. It is the goal of the City to prevent favoritism and conflict of interest.

If two employees marry while both are employed in the same department in the City, it shall be necessary for one of the employees to transfer to a different department of the City, if possible, or resign from City service within six months after marriage.

Section 8.04 Requisition and Sources of Recruitment

The Department Head will notify the Personnel Officer or designee

of a position which is, or will become, vacant. The appointing authority shall immediately notify the Personnel Officer or designee when a vacancy is to be filled. The Human Resources Office staff shall begin recruitment for the position utilizing the following: internal recruitment, external recruitment, reinstatement, transfer, demotion, re-employment or eligibility list.

Section 8.05 Provisional Appointment (See Employment Practices - Types of Appointments - Temporary - Provisional)

Section 8.06 Job Announcements

All examinations shall be announced in a bulletin which shall specify at least the major job responsibilities and desirable qualifications, and the selection process options of the City. Job announcements shall be shared with employees via the City's email system. Recruitment methods shall be utilized as necessary to ensure that segments of the labor market available to the City are utilized.

Section 8.07 Application Forms

Applications shall be made only on forms provided by the Personnel Officer or designee. Such forms shall require information covering training, experience and educational background and other information deemed pertinent by the appointing authority. All applications must be received by the Personnel Officer or designee within a filing period prescribed by the Personnel Officer or designee.

Section 8.08 Rejection of Application

The Personnel Officer or designee may reject any applicant who:

- a. Does not possess the established minimum requirements for the advertised position.
- b. Has made a false statement concerning any material fact, or has practiced or attempted practice of any deception or fraud in the application or examination, or in securing eligibility for appointment or promotion, regardless of when discovery was made.
- c. Fails to pass satisfactorily any medical or job-related examination which may be required.
- d. Fails to meet special conditions of employment.

Section 8.09 Examinations

The selection of techniques used in the examination process shall be impartial and shall relate to those subjects which are related to the duties and responsibilities of the position.

The examination process may consist of any of the following: written tests, oral interviews, performance tests, medical examinations and other job-related tests or any combination thereof. Examinations may be open or promotional at the discretion of the Personnel Officer or designee who shall consider the recommendations of the Department Head.

Section 8.10 Promotional Examinations

Promotional examinations may be conducted whenever, in the opinion of the Personnel Officer or designee, the City determines it is in the City's best interest to do so. Promotional examinations may include any of the selection techniques or any combination thereof mentioned above. Employees who meet the minimum qualifications and apply for open, promotional opportunities shall be given the opportunity to interview.

Section 8.11 Open Examinations

Open examinations may be conducted at the discretion of the Personnel Officer or designee after consultation with the Department Head.

Section 8.12 Conduct of Examinations

The Personnel Officer or designee shall determine the manner, method and by whom examinations shall be prepared and administered. The City may contract with any competent agency or individual for the performance of this service. In the absence of such a contract, the Personnel Officer or designee shall perform or delegate such duties.

Section 8.13 Notification of Results

Applicants who meet the requirements for admission to the eligibility list must be notified that they have achieved minimum rank. In addition, each non-selected applicant must be given notice of non-selection.

Each candidate in an examination shall be given notice of the results within a reasonable amount of time.

Section 8.14 Eligibility List

An eligibility list shall be established following the examinations to determine the names of applicants who have achieved minimum rank. Such applicants shall be deemed as qualified for appointments pending further review by the appointing authority and other qualifying procedures, including reference checks, medical

examinations and background investigations. Eligibility lists shall be valid and in effect for a period of six months up to a maximum of one year at the discretion of the Personnel Officer or designee. Eligibility lists shall be certified by the Personnel Officer or designee.

Section 8.15 Appointment From Eligibility List

When an appointment is made from any eligibility list, the Personnel Officer or designee shall certify names from the appropriate list. The appointing authority shall further review the job-related qualifications of those certified before making selection decisions.

Section 8.16 Re-Employment and Reinstatement

With the approval of the appointing authority and the Personnel Officer or designee, a regular or probationary employee who has completed at least six months of probationary service and who has resigned with a good record and in good standing, may be reinstated to the former position, if vacant, or to a vacant position in the same or a comparable class within one (1) year from date of resignation.

No credit for former employment shall be granted in computing salary, vacation, sick leave or other benefits except on the specific recommendation of the appointing authority and the approval of the Personnel Officer or designee.

a. Re-employment List

In the case of layoffs, a re-employment list is maintained when a vacancy occurs in the subject class; the appointing authority shall consider former employees from the list. The list shall be maintained for one year and as people are appointed to positions, their names are dropped from the list. Employees on the re-employment list are responsible for informing the City of current address, telephone number and availability for work.

Section 8.17 Selection

Selection from the eligibility list may be made at any rank on the list of qualified applicants at the direction of the appointing authority. Any candidate who appears on the list may be selected.

Section 8.18 Physical Examination

Prospective employees shall be required to pass a medical or physical examination as may be prescribed. The Personnel Officer or designee shall select a licensed medical doctor to perform the examination, the cost of which shall be borne by the City. The examination will determine the applicant's fitness to perform the job.

Section 8.19 Background Investigation

The Personnel Officer or designee will conduct a background check on the successful candidate(s) which will focus on job-related qualifications. Background investigations may include reference checks, checks of criminal records and any other valid background checks deemed necessary by the Personnel Officer or designee.

Section 8.20 Orientation

All new employees will be required to attend an orientation program designed to inform new employees of City benefits, policies, and procedures. Such orientation will normally occur within the first week of the employee's employment. Regardless of the timing of the orientation, an employee's benefit package will not be negatively impacted if a selection has been made and the proper paperwork turned in in accordance with the provisions of these rules.

Section 8.21 Outside Employment

An employee's first obligation is to the position held with the City of San Juan Capistrano. Employees may only accept other employment if:

- a. The work does not present a conflict of interest, provide undue liability for the City, cause an interruption in the work schedule assigned the employee, or create a disciplinary action.
- b. The employment is approved in writing by the Personnel Officer or designee.

Employees shall receive approval of outside employment as indicated above prior to acceptance of that employment. Each notification shall be placed in the employee's personnel file.

TYPES OF APPOINTMENT

Section 8.22 **Types of Appointments.** Appointments to City service are divided into the following categories:

- (a) **Probationary.** Shall be the appointment of a person to a position which the employee must serve a probationary period of a certain designated time span to demonstrate competency for the position.
- (b) **Regular.** Shall be the appointment of a person who has satisfactorily completed his/her probationary period.

(c) **Acting.** Shall be the temporary assignment of a regular or probationary employee to a higher level classification to fill a vacant position or to provide a replacement for an employee who remains on a leave of absence. Acting appointments may end at any time without advance notice or right of appeal.

There is no change in benefits during an acting appointment, as benefits continue to be governed by existing bargaining unit agreements. The only exception to this is when an employee is acting in a management or executive position, where the acting assignment does not provide overtime pay or compensatory time for hours worked over 40 in a work period, as the management and executive positions are exempt from overtime.

(d) **Temporary.** Shall be the appointment in one of the categories listed below of a person to a position intended to be occupied on an intermittent basis to cover increased workloads of limited duration, necessary vacation relief and other situations involving fluctuating staff.

Employees whose appointments are temporary shall not be covered by the City's group insurance, disability, retirement, or any other benefit programs, except as required by law, unless specifically authorized by the Personnel Officer or designee. Temporary employees do not serve probationary periods, and are at-will employees who serve at the pleasure of the appointing authority. Temporary appointments may be terminated at any time without cause and without any right of appeal.

- (1) **Extra Help.** Any appointment not exceeding six (6) months, or, exceeding six (6) months but regularly working a maximum of 20 hours per week.
- (2) **Limited-Term.** Any appointment generally for a period of more than six months, but less than 18 months working more than 1040 hours per fiscal year.
- (3) **Emergency.** To meet immediate needs of an emergency (i.e., civil disaster), but for only as long as the emergency exists.
- (4) **Provisional.** In the absence of individuals eligible or acceptable for appointment from appropriate eligibility lists, a provisional appointment may be made by the appointing authority of an individual who meets the training and experience requirements for the position. A provisional appointment shall be less than 12 months duration, and generally shall only last for the duration of the recruitment process. Extension beyond one year shall be

subject to the approval of the City Manager. The City Manager shall specify the term of the extension. If the position is one that falls under representation by one of the City's recognized employee associations, the appropriate association shall be informed of the extension and the reason for such extension. Such an appointment may be made during the period of suspension of an employee, or pending final action on proceedings to review suspension, demotion, or discharge of an employee. Provisional appointments may also be made under other circumstances deemed for the good of the service by the Personnel Officer or designee. A provisional employee may be removed at any time without notice or rights to a hearing. Provisional employees may accrue fringe benefits as specifically authorized by the City Manager.

As one form of at-will temporary employment, provisional appointments are not applicable to existing probationary or regular employees.

(e) **Part-Time.** Shall be the appointment to a position that is less than or equal to 35 hours per week and is anticipated to last into the foreseeable future.

(Benefited Part-Time employees (i.e., those hired prior to 7/1/18) shall receive benefits in accordance with the Personnel Rules and Regulations and shall be subject to the due process rights associated with "Regular" employment status.

Part-time employees hired on and after 7/1/18 shall be at-will, do not serve a probationary period, and appointments may be terminated at any time without advance notice or right of appeal. Part-time employees hired on or after 7/1/18 shall only receive benefits as specifically called out in these Rules and Regulations or required by law. If a benefit noted in these Rules and Regulations does not specify that it applies to a part-time employee, then the benefit is not available to a part-time employee, unless specifically authorized by the Personnel Officer or designee.)

RULE 9 PROBATIONARY PERIOD

The probationary period shall be part of the screening process and shall be utilized for the following:

- a. To closely observe an employee's work.
- b. To provide for the most effective adjustment of an employee to the position.

- c. To further evaluate an employee to determine if he or she meets the required standards of the job to which appointed.

When an employee is appointed to a new position as a result of promotion, transfer or for any other reason, a new probationary period, as provided herein, shall begin at the time of appointment to the new position.

Section 9.01 Regular Appointment Following Probationary Period

Original appointments to positions within the classified service shall be subject to a probationary period of no less than six months and no more than twelve months. Original appointments to positions within the Management Service shall be subject to a probationary period of twelve months. At the conclusion of the probationary period, the employee will be notified of regular status, provided the appointing authority approves the action.

Achievement of regular employee status shall be based upon successful completion of a probation period, as determined by the Department Head and approved by the Personnel Officer or designee.

For management employees, only in cases of exceptional performance by an exceptional employee, as documented in writing by the Department Head, will the Personnel Officer or designee consider requests to consider a change in status (from probationary to regular) prior to twelve months of service.

Promotional appointments shall be subject to a probationary period of six months.

Section 9.02 Release of Probationary Employee

A probationary employee may be released at any time without the right of notice of an intent to reject or right of appeal or hearing during the probationary period. The appointing authority shall inform the Personnel Officer or designee of the appointing authority's desire to release a probationary employee. Notification of rejection shall be filed with the Personnel Officer or designee and a copy placed in the personnel file. An employee who does not receive a notice of release during the probationary period shall be deemed as passing probation and achieving regular status following the conclusion of the probationary period.

The appointing authority, after consultation with the Personnel Officer or designee, may at the appointing authority's discretion extend the initial probationary period of an employee up to 12 months. Notice

shall be given to the employee in writing.

A rejected probationer serving as a result of an original appointment shall be dismissed from City service. An employee rejected during or at the conclusion of the probationary period following promotional appointment shall be reinstated to the position or class, or a comparable position or class, from which the employee was promoted and shall receive credit for time served during the promotional position.

Section 9.03 Performance Evaluation During Probationary Period

A job performance evaluation during the employee probationary period shall be prepared within fourteen (14) calendar days of the mid-point of the probationary period. A performance evaluation can be done at any time during the probationary period.

RULE 10 CHANGES OF EMPLOYMENT STATUS

Section 10.01 Promotion

Promotion refers to the movement of an employee from a position in one classification to another classification consisting of higher duties and responsibilities, requiring higher qualifications and providing a higher maximum rate of pay.

Section 10.02 Promotion In-House

Insofar as practical and consistent with the best interest of the City, as determined by the Personnel Officer, vacancies shall be filled by promotion from within whenever qualified employees exist. Promotion only classes will be established by the Personnel Officer in consideration of input from the Department Heads.

Section 10.03 Requirements for Promotional Candidates

Any employee whose most recent employee performance evaluation has an overall rating that is less than meets standards may not apply for a promotional opportunity. Only employees who received a satisfactory overall rating at the time of their last performance evaluation, or are not on a Performance Improvement Plan (PIP), may compete in promotional opportunities.

Section 10.04 Rejection Following Promotion

An employee rejected during or at the conclusion of the probationary period following promotional appointment shall be reinstated to the position from which promoted and shall be reinstated to the position or class, or comparable position or class

from which promoted and shall receive credit for time served in the promotional position unless charges are filed and the employee is discharged in the manner provided for in these rules and regulations.

Section 10.05 Reclassification

Whenever a position is reclassified which is currently occupied by an incumbent who is satisfactorily performing the duties of the proposed position, the City shall place that incumbent in the reclassified position, without the need to undertake a recruitment. Such reclassifications shall not result in demotion.

A reclassification may occur when the essential duties of a position change due to new technology, new regulations or laws, reorganization within the city, or other compelling reasons that increase to a higher level the duties performed by the position.

The City shall notify the Association whenever a reclassification is to occur to allow the Association to request to meet and confer over the impact and salary of the position.

Out-of-Class grievances that result in position reclassifications shall also result in the reclassification of the employee, provided s/he has been satisfactorily performing the duties of the position for at least 6 months, as evaluated by the Department Head and approved by the Personnel Officer or designee.

Section 10.06 Transfers

A transfer occurs when an employee changes positions which are in the same classification. This may or may not involve a change of an employee's place of employment from one department to another.

A transfer must be approved by the affected Department Head(s) and the Personnel Officer or designee.

Section 10.07 Conditions for Transfer

An employee, who does not possess the minimum qualifications for an open position, shall not be transferred to that position. A qualified employee may be transferred, provided the transfer has been approved by the employee's supervisor, the new supervisor and the Personnel Officer.

Section 10.08 Employee Requested Transfers

All employees may apply for a transfer. A request may be submitted

only when a vacancy exists. The employee's request for transfer will be considered on the basis of the employee's qualifications for the vacant position and the best interests of the City. Requests for transfers must be received according to deadlines established by the Personnel Officer or designee.

The City will consider lateral transfers and promotional opportunities to vacant positions within the same or similar job class. The employee requesting the transfer must have had a "satisfactory" rating on their last evaluation and meet the minimum qualifications for the position. The City would have no obligation to hire any of the applicants for transfer.

Section 10.09 Employer Initiated Transfers

The City of San Juan Capistrano reserves the right to transfer its employees from one position to another or one department to another, if the transfer is necessary for the purpose of economy or efficiency.

Section 10.10 Voluntary Demotion

A regular employee may request a voluntary demotion to a vacant position in a class with a lower maximum salary rate provided the employee possesses the qualifications of that class.

Such requests must be filed with the Personnel Officer or designee and require approval of the current Department Head and that of the Department Head of the vacant position.

Section 10.11 Conditions for Layoff

The City Manager, with the concurrence of the City Council, may abolish any position, because of material change in duties and organization, or shortage of work or funds. The employee holding such position or employment may be laid off without disciplinary action and without the right of appeal. No regular employee shall be laid off until all temporary and probationary employees holding positions in the same class in the department are separated first. Only those employees in the department assigned to the class in which the position is to be abolished shall be involved in this layoff procedure.

Section 10.12 Notice of Layoff

Employees to be laid off shall be given at least fourteen (14) calendar days' notice.

Section 10.13 Order of Layoff

Seniority shall govern the layoff of employees except in the case where there are two or more employees having equal seniority (same hire date). Employee performance will then govern the layoff. Seniority shall be determined as total number of years of full-time employment with the City of San Juan Capistrano.

Section 10.14 Layoff Procedure

Employees shall be laid off in reverse order of seniority and in consideration of performance. In cases where there are two or more employees having equal seniority in the affected class, such employees shall be laid off on the basis of the last performance evaluation report in that class as determined by the City Manager.

Section 10.15 Re-employment List

The names of persons laid off in accordance with these rules shall be entered on a re-employment list for one year, except that persons appointed to an authorized full-time position shall, upon such appointment, be dropped from the list.

When a vacancy occurs in the subject class, the appointing authority shall consider the former employees from the re-employment list. It is the responsibility of the employee on a re-employment list to keep the City informed of his/her current address and telephone number, and availability for work.

Section 10.16 Termination - Resignation

An employee wishing to leave the City in good standing shall file with the immediate supervisor at least two (2) weeks before leaving the City a written resignation stating the effective date and reason(s) for leaving.

The resignation shall be forwarded by the Department Head to the Human Resources Office and City Manager.

Section 10.17 Exit Interviews

Employees may receive exit interviews upon request when separating from employment. The interview will be conducted by the Personnel Officer's representative. When an employee simply telephones from the outside to resign, the call should be referred to the Human Resources Office.

Section 10.18 Performance Evaluation

Each supervisor or Department Head having immediate charge of an employee or group of employees, shall make or cause to be

made, on forms provided by the Personnel Officer or designee, performance evaluation reports for all subordinates. Performance evaluations shall be considered in actions relating to transfer, promotion, demotion or changes affecting the status of an employee.

Section 10.19 Timing of Performance Evaluations

The employee performance evaluation shall be completed by the appointing authority within specific time frames set by the Personnel Officer or designee. The evaluation shall be signed and dated by the supervisor, Department Head and employee, and copies provided to appropriate personnel. An employee may examine the employee's own performance evaluation on file in the Human Resources Office.

RULE 11 DISCIPLINARY ACTION

Section 11.01 Application

The appointing authority shall apply necessary and appropriate disciplinary action whenever an employee fails to meet the required standards of conduct or performance. Discipline is the enforcement of conformity to policies, rules and regulations and other administrative or legal requirements or practices designed to maintain a standard of cooperation and conduct necessary to carry out the service mission of the City organization successfully. The disciplinary action, when taken, shall be documented in such a manner as to be defensible at review and/or upon filing of a grievance by the disciplined employee.

Section 11.02 Types of Disciplinary Action

Disciplinary actions include counseling, oral warning, written reprimands, suspensions, demotions and discharge as defined below:

- a. Counseling – This is the lowest form of corrective action. It consists of any supervisory-level staff member providing oral feedback to an employee on what is expected. A supervisor shall communicate that counseling is taking place in regards to disciplinary action.
- b. Oral Warning - In the event that a supervisor, manager, or the appointing authority determines that a deficiency in performance or conduct is not of sufficient magnitude to warrant a more formal disciplinary action, and often-times after an employee has received counseling as noted above, an

oral warning may be given to the employee, which should include examples of corrective actions which should be taken to improve performance or conduct in question. A confidential written record shall be made of such conferences with a copy provided to the employee. The written record stays in a supervisor's file, unless it is used to substantiate higher level discipline in the future.

- c. Written Reprimand – A written statement from a manager or the appointing authority to a subordinate of an action, which meets any of the grounds for disciplinary action listed in these rules. After verbal consultation, an official notification in writing by the manager or the appointing authority to the employee that there is cause for dissatisfaction with his/her services and that further disciplinary action may be taken if the job performance does not improve.
- d. Suspension - The temporary separation of an employee from City service without pay, for disciplinary purposes.
- e. Demotion - A change in employment status from one position to another having a lower rate of pay and/or a change in duties which are allocated to a class having a lower maximum rate of pay. The demotion may be temporary or permanent.
- f. Discharge - The separation of an employee from City service on disciplinary grounds by the appointing authority.

Section 11.03 Causes for Disciplinary Action

The causes of disciplinary action include, but are not limited to, the following:

- Insubordination, which shall consist of violation of any official regulation or order or failure to obey any proper directions made and given by a supervisor in the course of employment.
- Incompetence, inability or failure to perform the duties required by the position, as well as willful neglect of official duty.
- Gross carelessness in the discharge of assigned duties.
- Substance abuse, consumption of alcoholic beverages during working hours or reporting to work in a state of intoxication.

- Presentation or use of known false information in any manner to commit or attempt to commit fraud, or the falsification or unauthorized alteration of City documents or records.
- Repeated tardiness or excessive absences, or the improper or unauthorized use of leave privileges or benefits.
- Misuse of time on the job.
- Careless, negligent, improper and unauthorized use of City equipment, property or funds for private or personal purposes.
- Unauthorized discussion or release of confidential informational documents or records.
- Violation of the Personnel Ordinance or rules and regulations or a promulgated department rule, regulation or policy.
- Use of narcotics or drugs, which impair job performance, except as prescribed by a licensed physician.
- Refusal or failure to promptly or properly report an injury or disability arising from or in the course of employment.
- Engaging in unauthorized or incompatible employment elsewhere.
- Fighting, coercing, interfering with or threatening injury or harm to another employee or member of the public, or challenging such an individual to a fight.
- Dishonesty.
- Conviction for any felony or misdemeanor.
- Possession of explosives, firearms, or a weapon of any type or hazardous substances while on the job or on City property, unless specifically authorized.
- Failure to hold and maintain necessary licenses, certifications, or endorsements.
- Stealing, willful damage, willful abuse or willful destruction of City property or the property or equipment of another employee or member of the public.

- Discourteous treatment of the public or co-worker.
- Leaving regularly assigned work location without the supervisor's knowledge and permission, except to take usual breaks and lunch periods or to perform assigned work duties.
- Political campaigning of any kind while in a City uniform or using one's official City title or position in connection with political campaign literature or activities.
- Any form of harassment or discrimination.
- Unauthorized absence.

Section 11.04 Disciplinary Procedures

When a regular employee is to be suspended, demoted or discharged, a preliminary written notice of the proposed action is to be prepared by the appropriate staff member and reviewed by the Human Resources Office, and then delivered to the employee. The written notice shall include:

- a. The reasons for the proposed action.
- b. The charges being considered.
- c. The proposed disciplinary action to be taken.
- d. A statement advising that before the proposed disciplinary action takes effect the employee has a right to respond either orally or in writing, at a Skelly Conference to be held approximately fourteen (14) calendar days from receipt of the written notice.
- e. A statement advising the employee of the right to a representative at the Skelly Conference.
- f. A copy of the documents or materials that the proposed action is based on.

The employee is entitled to be represented at any meeting concerned with potential disciplinary action when the employee's presence is required at said meeting.

Any supervisor may counsel or give an oral warning to a direct report. A manager may counsel, warn, reprimand, and recommend suspension, demotion or discharge. The appointing authority may counsel, warn, reprimand, suspend, demote, or discharge an employee.

To help maintain consistency in the administration of corrective action throughout the organization, an oral warning should be reviewed by Human Resources. Any higher level discipline above an oral warning must be reviewed by Human Resources before it is issued to an employee.

Section 11.05 Notification of Decision

Within ten (10) working days after the employee has had the opportunity to respond, the appointing authority shall notify the employee of any disciplinary action to be taken and the effective date.

Section 11.06 Appeal of Decision

The employee may appeal the decision within ten (10) working days of the notification of disciplinary action. The appeal may be made directly to the City Manager or an impartial arbitrator/hearing officer may be utilized to provide an advisory opinion to the City Manager prior to the submittal of the appeal to the City Manager: The procedure for a disciplinary appeal hearing is found in Administrative Policy #228, *Rules of Procedure and Evidence for Disciplinary Appeal Hearings*.

a. Advisory Arbitration/Hearing Officer

The impartial arbitrator/hearing officer shall be selected by the employee and designated representative and the City. The cost of the arbitrator/hearing officer, if any, shall be borne equally by the employee and the City. The arbitrator/hearing officer shall submit a written advisory opinion to the City Manager who shall make the final and binding decision to sustain, revoke or modify the decision of the appointing authority.

b. City Manager

An employee may submit the appeal directly to the City Manager. Within ten (10) working days after submission of the appeal or receipt of the written advisory opinion of the arbitrator/hearing officer, the City Manager shall make the final and binding decision to sustain, revoke or modify the decision of the appointing authority who took the disciplinary action against the employee.

Section 11.07 Temporary Absence with Pay

Notwithstanding the provisions of this section, upon the recommendation of the appointing authority, the City Manager or

designee may approve the temporary assignment of an employee to the status of absent with pay pending completion of any investigation(s) or hearing(s) as may be required to determine if disciplinary action is to be taken. Such status shall be conditioned such that the employee remains available and in daily telephone contact with the employer.

RULE 12 GRIEVANCE PROCEDURE

Section 12.01 Matters Subject to Grievance Procedures

A grievance shall be initiated through an informal first step when the employee notifies the supervisor verbally of his/her contention that the City has violated or misapplied a specific obligation expressed and/or written in the Personnel Rules and Regulations of the City. Human Resources Office staff is available to assist Department Heads in such matters as the interpretation of Rules, documentation procedures and preparation of notices as requested.

Section 12.02 Notification of Grievance

The second step in the grievance process shall be a written notice filed in a timely manner, on a form provided by the City, which shall include at a minimum:

- a. Nature of the grievance;
- b. Date when the incident occurred;
- c. Description of the incident;
- d. Rule violated; and,
- e. Specific remedy sought by the employee.

Section 12.03 Steps in the Grievance Process

First Step

Within ten (10) working days after the occurrence of the incident involved in the grievance, the employee may initiate the grievance process by discussing the matter informally with his/her immediate supervisor. An attempt shall be made to resolve the grievance between the employee and the immediate supervisor. The supervisor shall deliver an oral or written response within ten (10) working days after submission of the grievance.

Second Step

If the grievance is not satisfactorily resolved in the first step, the grievance may be submitted to the supervisor's supervisor, if any, within the department organization within ten (10) working days after the immediate supervisor's answer is received by the employee. After an attempt to resolve the grievance between the employee and his/her designated representative, if any, the intermediate supervisor

shall deliver a written answer within ten (10) working days after submission of the grievance. If there is no intermediate supervisor, the grievance shall go directly to the Department Head.

Third Step

If the grievance is not satisfactorily resolved in the first and second steps, it shall be submitted in writing to the employee's Department Head within ten (10) working days after the intermediate supervisor's answer is received by the employee. The Department Head shall meet with the employee and his/her designated representative, if any, within ten (10) working days after submission of the grievance to the Department Head. The Department Head shall review the grievance and may affirm, reverse or modify the disposition made at the first and second steps and shall deliver a written answer to the employee within ten (10) working days after said meeting.

Section 12.04 Appeal of Decision

If the grievance is not satisfactorily resolved, the employee may appeal the decision of the Department Head to the City Manager. At the option of the employee, the grievance may be submitted:

- a. Directly to the City Manager, or
- b. To an impartial arbitrator who will provide an advisory opinion to the City Manager prior to the consideration of the grievance by the City Manager.
- c. To a mediator from the State Mediation and Conciliation Service who will provide findings and recommendations to the City Manager prior to consideration of the grievance by the City Manager.

When the appeal is submitted to the City Manager, it shall specify whether the employee desires to have the appeal considered directly by the City Manager or reviewed first by an impartial arbitrator. Such submission must occur within ten (10) working days after the Department Head's written answer is received.

Section 12.05 Advisory Arbitration

An employee may elect to use an impartial arbitrator to provide an advisory opinion to the City Manager prior to the consideration of the grievance by the City Manager. After a hearing on the merits of the grievance and considering evidence from all parties concerned, the impartial arbitrator shall submit a written advisory opinion to the City Manager.

Within ten (10) working days after receipt of the written advisory opinion of the impartial arbitrator, the City Manager shall meet

with the employee and his/her designated representative, if any, and other appropriate persons to assess the grievance. The City Manager may affirm, reverse or modify the disposition of the grievance. The City Manager shall deliver a written decision to the employee within ten (10) working days after said meeting. The City Manager's decision shall conclude the administrative appeals procedure.

If an employee elects to use an impartial arbitrator, the arbitrator shall be selected jointly by the employee and his/her designated representative, if any, and the City. The cost of the arbitrator, if any, shall be born equally by the employee and the City.

Section 12.06 State Mediation

An employee may elect to use a certified mediator from the State Mediation and Conciliation Service to provide findings and recommendation to the City Manager prior to the consideration of the grievance by the City Manager. After a hearing on the merits of the grievance and considering evidence from all parties concerned, the certified mediator shall submit a written summary of his/her findings and recommendations to the City Manager.

Within ten (10) working days after receipt of the written summary of findings and recommendations from the certified mediator, the City Manager shall meet with the employee and his/her designated representative, if any, and other appropriate persons to assess the grievance. The City Manager may affirm, reverse or modify the disposition of the grievance. The City Manager shall deliver a written decision to the employee within ten (10) working days after said meeting. The City Manager's decision shall conclude the administrative appeals procedure.

If an employee elects to have a certified mediator from the State Mediation and Conciliation Service, the certified mediator shall be selected jointly by the employee and his/her designated representative, if any and the City. The cost of the certified mediator, if any, shall be born equally by the employee and the City.

Section 12.07 City Manager

An employee may elect to submit the grievance directly to the City Manager for a final and binding decision. Within ten (10) working days after submission of the grievance to the City Manager, the City Manager shall meet with the employee and his/her designated representative, if any, and other appropriate persons to

assess the grievance.

The City Manager may affirm, reverse or modify the disposition of the grievance. The City Manager shall deliver written decision to the employee within ten (10) working days after said meeting, and such decision shall conclude the administrative appeals procedure.

Section 12.08 Extension of Time

Any or all of the time limitations mentioned above with reference to filing and response times may be extended by mutual agreement between the employee and the City.

RULE 13 SAFETY

Every employee is entitled to a safe and healthful place in which to work. To this end, reasonable effort will be made in the interest of accident prevention, fire protection and health preservation.

The City will maintain a safe and healthful work place. It will provide safe working equipment, necessary personal protection, and, in the case of injury, provide first-aid as appropriate.

The City will exert every effort to abide by all regulations as they pertain to governmental agencies which are set forth in Federal and State standards, and good practices as dictated by location and circumstances.

It is part of the employee's responsibility to identify safety concerns and report them immediately to the employee's supervisor so that the City may investigate and provide corrective action as necessary.

Section 13.01 No Smoking in City Vehicles

In order to preserve the health, safety and welfare of employees, the City of San Juan Capistrano hereby prohibits smoking in City vehicles. In addition to cigarettes, this includes the use of smokeless tobacco, e-cigarettes, and any other technology-based instrument or practice involving any smoking or tobacco-related product.

RULE 14 Harassment and Discrimination Prevention.

It is the policy of the City of San Juan Capistrano to assure equal employment opportunity and fair employment practices to all persons.

The law holds the City responsible to ensure a workplace free of discrimination and harassment. The City shall be proactive in its prevention efforts. Harassment and/or discrimination of an employee by a supervisor, management employee or co-worker on the basis of race, color, religion, national origin, ancestry, physical or mental disability, equal pay/compensation, medical condition, marital status, sex, sexual orientation, pregnancy, childbirth, breastfeeding or related medical conditions, gender identity, gender expression, genetic information, AIDS/HIV, military or veteran status, political affiliations or activities, status as a victim of domestic violence, assault, or stalking, association with a member of a protected class, engagement in protected activity, or age will not be tolerated. Harassment by supervisory personnel is particularly serious and will not be tolerated.

The City is committed to a policy of preventing discrimination and harassment in all employment practices including work assignments, recruitment, selection, promotions, transfers, training, compensation, benefits and discipline. The City resolves to develop and monitor programs and processes that ensure constant and consistent adherence to this policy. All City employees are expected to adhere to this policy and to fully cooperate in the implementation of the goals and objectives established. In addition, the City requires that all its contractors, subcontractors and vendors not harass or discriminate in the employment and treatment of persons.

Violation of Policy

Violation of these policies will generally constitute grounds for discipline, up to and including discharge. It is important that all employees understand the City's position relative to this subject. All executives, managers, and supervisors are responsible for compliance with these policies. It shall be a violation of City policy for an employee to retaliate in any way against an employee for submitting a complaint of discrimination and/or harassment and/or retaliation or cooperating in an investigation involving same.

Harassment

Harassment includes, but is not limited to:

Verbal Harassment - For example, epithets, derogatory comments or slurs on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, sex, sexual orientation or age.

Physical Harassment - For example, assault, impeding or blocking movement, or any physical interference with normal work or movement when directed at an individual on the basis of race, religious creed,

color, national origin, ancestry, physical or mental disability, marital status, sex, sexual orientation or age.

Sexual Harassment - For example, unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature which is conditioned upon an employment benefit, unreasonably interferes with an individual's work performance or creates an offensive or hostile work environment. Harassment in which a supervisor or other authority demands sexual favors in exchange for job benefits is termed "quid pro quo" harassment.

Sexual harassment can be identified as something deliberate, as explicit, coercive sexual behavior which infers an attempt to control, influence or affect the career, salary, job or working conditions of another employee.

Sexual harassment can also be identified as conduct of a sexual nature that is neither explicit nor even specifically directed at the victim, but rather creates a hostile or offensive work environment.

Some subtle forms of sexual harassment are, referring to women as "girls," men as "boys," or using demeaning, inappropriate, and unwelcome terms of endearment while at work; comment(s) directed at the way a person looks, rather than commenting on the quality of his/her work; interrupting a person who is talking about work with comments about his/her appearance or physical attributes; eye contact, staring or gazing at a person in a way that implies a sexual message or relationship; flirting; teasing, touching, joking propositions, or comments filled with sexual innuendo or double meanings; telling (a) joke(s) with a sexual meaning, tone, or implicating; displaying (a) cartoon(s), calendar(s), picture(s), desk object(s), or pin-up(s) which convey a sexual message, tone, or implication or make a joke of another person's appearance.

Discrimination/Harassment Complaint Procedure

Confidentiality

Efforts will be made to protect the privacy of the parties involved in a discrimination or harassment complaint. Files pertaining to complaints handled under this process will be handled with a high degree of confidentiality. They will be available on a "need to know" basis as determined by the Human Resources Manager or a designee thereof. Identities should not be disclosed except to the extent necessary to continue the investigation. Statements made by employees should not be disclosed to other employees except as necessary to elicit specific, relevant and necessary information from the employee.

Informal Complaint Process

An employee who feels he or she was subject to discrimination or harassment may

discuss the matter with the immediate supervisor immediately. If the employee chooses, he/she may elect to be represented or may choose to represent him/herself. The right to representation shall not limit supervisory authority to take appropriate, immediate corrective action when circumstances warrant. If at any time the employee does not believe the problem has been satisfactorily resolved or is not comfortable with proceeding through the chain-of-command, the employee may present the complaint to the Human Resources Manager. It is the responsibility of the person receiving the complaint to:

- A.** Counsel the employee and outline the options available under the City's discrimination/harassment prevention policies and complaint procedures; and
- B.** Assist the employee in immediately bringing the matter to the attention of the appropriate departmental official(s) to resolve the complaint at the earliest possible date; and
- C.** Advise the employee that efforts will be taken to maintain confidentiality, however, depending on the information concerning the complaint, it may be necessary to take immediate and corrective action after having been made aware of the situation.

If the employee does not agree with the proposed resolution of the complaint, he/she may then file a formal complaint.

Nothing shall prohibit an employee from bypassing the informal complaint process and filing a formal complaint.

Nothing shall prohibit an employee from filing a complaint with the federal Equal Employment Opportunity Commission or the State Department of Fair Employment and Housing before or after filing a complaint with the City.

Formal Complaint Process

An employee who feels he/she has been harassed or discriminated against in terms of the City's Policy has the options of filing a formal complaint with 1) either the Department Head of the complainant or of the accused or 2) the Human Resources Manager. (Said official is herein referred to as the Complaint Investigator.) If the Human Resources Manager is not designated as the Complaint Investigator, he/she shall work with the Complaint Investigator throughout the investigation to clarify City policies and assist ensuring proper conduct of the investigation.

This initial report can be oral or written. In the case of an oral report, the official will gather the pertinent information concerning the allegation and prepare a written statement constituting the complaint for the approval and signature of the complainant. The investigator shall ask the complainant what action would resolve the issue. The written and signed statement of the complaint will initiate a

formal investigation into the matter. The City Manager's Office shall be notified that a complaint has been filed and that an investigation is proceeding.

Copies of the signed statement will be made available to the appropriate Department Head(s) and the Human Resources Manager.

Within seven (7) working days of receipt of the signed, written complaint, the individual conducting the investigation will proceed with it as follows:

- A.** The Complaint Investigator shall contact the person(s) who allegedly engaged in discrimination or harassment and inform him or her of the basis for the complaint and give the individual and his/her representative an opportunity to respond. The person accused shall have a right to have a representative present. The Complaint Investigator will give the accused a copy of the complaint. The Complaint Investigator will make a record of any response. The Complaint Investigator will give appropriate warning to the accused regarding future contact with the complainant.
- B.** That person shall then have seven (7) working days to respond to the complaint orally, in writing, or both. The response shall be directed to the Complaint Investigator. In the case of an oral response, the Complaint Investigator will prepare a written statement for the approval and signature of the person who allegedly engaged in discrimination or harassment.
- C.** Upon receipt of the response, the Complaint Investigator will review, research and investigate, as necessary, to determine whether discrimination or harassment has occurred. The investigation may be expanded to include interviews with witnesses and supervisors as appropriate. The Investigator shall maintain a confidential record of information gathered in the investigation. The investigation shall be completed as quickly as possible. The Investigator has a duty to act in a reasonably timely manner given the circumstances and avoid delay.
- D.** Within seven (7) working days of completion of the investigation, the Department Head(s) and Human Resources Manager will consult to review the proposed findings and consider the appropriate action to be taken. Action may include discipline, up to and including discharge. Files should be made available to the accused employee, if there is a recommendation for discipline in conformity with the Skelly decision. The Department Head of the accused shall have the authority to determine what action, if any, will be taken after such consultation. The Human Resources Manager's review shall be for the purpose of ensuring compliance with the law and consistency with City policy.

A Department Head or the Human Resources Manager will be excluded from this

procedure in cases where he/she is named as a person responsible for the alleged discrimination/harassment. In such cases, the authority to consider what action to take shall rest with the remaining officers and the Assistant City Manager. In such cases, the Assistant City Manager shall have the authority to determine what action will be taken.

- E. The Department Head shall notify both parties, in writing, of the findings and conclusions with copies to the Human Resources Manager, other Department Head, if appropriate, and the City Manager's Office. This decision shall be final unless the employee has a right to appeal the action taken against him/her under the City rules or a Memorandum of Understanding. The complainant shall be notified of the corrective action taken with due respect for the privacy rights of the affected employee(s).
- F. The person who allegedly engaged in discrimination, harassment, or retaliation retains all rights provided for in the Memorandum of Understanding and the City rules.

RULE 15 ATTENDANCE AND ABSENTEEISM

Attendance

Employees shall be in attendance in accordance with these rules and regulations governing hours of work, leaves and holidays. All departments shall maintain attendance records for all employees.

Each employee will be at work and ready to work at starting time and will work until quitting time. Habitual tardiness will be a matter for disciplinary action.

Absenteeism

Any employee who is absent from work shall be responsible for notifying their supervisor in a timely manner indicating when the employee will report back to work. Any employee who fails to comply with this rule will be subject to disciplinary action.

RULE 16 ALCOHOL AND DRUG ABUSE POLICY

Policy

It is City of San Juan Capistrano policy that employees shall not be impaired by, or have in their biological system, or be in possession, of alcohol or drugs while on City property, at work locations, or while on duty or in pre-arranged on-call status, and that employees shall not sell or provide drugs or alcohol to any other employee or person while on duty or in pre-arranged on-call status.

While use of validly prescribed medications and drugs does not violate this policy per se, failure by an employee to notify his/her supervisor, before beginning work, when taking medications or drugs which could foreseeably interfere with the safe and effective performance of duties, or the operation of City equipment, can result in discipline up to and including discharge. In the event there is a question regarding an employee's ability to safely and effectively perform assigned duties while using such medications or drugs, clearance from a qualified physician may be required.

The City reserves the right to search, without employee consent, all work areas and property in which the City maintains control or joint control with the employee. Otherwise, the City may notify appropriate law enforcement agencies that an employee may have illegal drugs in his or her possession or in an area not jointly or fully controlled by the City.

Employees reasonably believed to be under the influence of alcohol or drugs may be required to submit to an alcohol and/or drug analysis and may be prevented from engaging in further work and shall be detained for a reasonable time until he or she can be safely transported from the work site.

Refusal to immediately submit to an alcohol and/or drug analysis when requested by City management or law enforcement personnel, or refusal to submit to a search of personal properties if requested by law enforcement personnel, may constitute insubordination and be grounds for discipline up to and including discharge.

The City of San Juan Capistrano is committed to providing reasonable accommodation to those employees whose drug or alcohol problem classifies them as disabled under federal and/or state law.

The City of San Juan Capistrano is concerned with the well-being and safety of all its employees. It will assist employees who voluntarily seek help for alcohol or drug problems. Employees should contact their supervisor or the Personnel Officer or designee for additional information.

Application

This policy applies to all employees of the City of San Juan Capistrano. This policy applies to alcohol and drugs, including all substances, drugs, or medications, whether legal or illegal, which

could impair an employee's ability to effectively and safely perform the functions of the job.

EMPLOYEE RESPONSIBILITIES

An employee must:

- * not report to work or be subject to duty while his/her ability to perform job duties is impaired due to on or off duty alcohol or drug use;
- * not possess or use alcohol or impairing drugs, including illegal drugs and prescription drugs without a prescription, during working hours or while subject to duty, on breaks, during meal periods or at any time while on City property or in City vehicles;
- * when so requested by a City representative, surrender possession of alcohol or impairing drugs, including illegal drugs and prescription drugs for which no valid prescription is available;
- * not directly or through a third party sell or provide drugs or alcohol to any person, including any employee, while either or both employees are on duty or subject to being called to duty;
- * submit immediately to a search and an alcohol and drug test when requested by a City representative, upon reasonable suspicion;
- * notify his/her supervisor, before beginning work, when taking medications or drugs, prescription or non-prescription, which may interfere with the safe and effective performance of duties or operation of City equipment; and,
- * provide, within 24 hours of request, bona fide verification of a current valid prescription for any potentially impairing drug or medication identified when a drug screen/test is positive. The prescription must be in the employee's name.
- * report all breaches of this policy.

SUPERVISORY RESPONSIBILITIES AND GUIDELINES

- * Supervisors are responsible for reasonable enforcement of this policy.
- * Supervisors may request that an employee submit to a drug and/or

alcohol test when a supervisor has a reasonable suspicion that an employee is intoxicated or under the influence of drugs or alcohol while on the job or on pre-arranged on-call status.

"Reasonable suspicion" is a belief based on objective facts sufficient to lead a reasonably prudent supervisor to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or so that the employee's ability to perform his/her job safely is reduced.

For example, any of the following, alone or in combination, may constitute reasonable suspicion:

- Slurred speech;
- Alcohol odor on breath;
- Unsteady walking and movement;
- An accident involving City property, where it appears the employee's conduct is at fault;
- Physical altercation;
- Verbal altercation;
- Atypical behavior;
- Possession of alcohol or drugs;
- Information obtained from a reliable person with personal knowledge.

- * Any supervisor requesting an employee to submit to a drug and/or alcohol test will document in writing the facts constituting reasonable suspicion that the employee in question is intoxicated or under the influence of drugs.
- * The authority for enforcement and testing under this policy is limited to an employee's chain-of-command supervisors, including direct supervisor, division manager, Department Head and City Manager or his designee.
- * Upon suspicion that an employee is impaired, the supervisor must request that another supervisor (in the employee's chain-of-command, whenever possible) be present to witness the signs of impairment and concur with the need for testing.
- * Employees refusing an order to submit to a drug and/or alcohol analysis upon request shall be reminded of the requirements and disciplinary consequences of this policy. Where there is reasonable suspicion that the employee is under the influence of alcohol or drugs, the supervisor shall arrange for the employee to be safely transported home.

- * No employee shall be physically searched on their person nor shall the personal possession of employee be searched without the freely given consent of, and in the presence of, the employee.
- * Department Heads or designee shall be notified when there is reasonable suspicion to believe that an employee may have illegal drugs in his or her possession or in an area not jointly or fully controlled by the City. If the Department Head or designee concurs that there is reasonable suspicion of illegal drug possession, the Department Head shall notify the appropriate law enforcement agency.

PHYSICAL EXAMINATION AND PROCEDURE

The drug and/or alcohol test may test for any substance which could impair an employee's ability to effectively and safely perform the functions of his/her job, including, but not limited to, prescription medications, alcohol, heroin, cocaine, morphine and its derivatives, P.C.P., methadone, barbiturates, amphetamines, marijuana and other cannabinoids. Exhibit "A" describes the method in which the initial test will be conducted, how the sample will be processed after the drug and/or alcohol test is completed, and how a confirmatory test after an initial positive result will be performed. Exhibit "A" is subject to periodic review and updates for compliance with legal and/or medical guidelines.

RESULTS OF DRUG AND/OR ALCOHOL ANALYSIS During Alcohol/Drug Tests

A positive result from a drug and/or alcohol analysis may result in disciplinary action, up to and including discharge.

If the drug screen is positive, the employee must provide within 24 hours of request bona fide verification of a valid current prescription for the drug identified in the drug screen. The prescription must be in the employee's name. If the employee does not provide acceptable verification of a valid prescription, or if the prescription is not in the employee's name, or if the employee has not previously notified his or her supervisor, the employee will be subject to disciplinary action up to and including discharge.

If an alcohol or drug test is positive for alcohol or drugs, the City shall conduct an investigation to gather all facts. The decision to discipline or discharge will be carried out in conformance with Rule 11 of the City of San Juan Capistrano Personnel Rules and Regulations.

Confidentiality

Laboratory reports and test results shall not appear in an employee's general personnel folder. Information of this nature will be contained in a separate confidential medical folder that will be securely kept under the control of the Personnel Officer. The reports or test results may be disclosed to City management on a strictly need-to-know basis and to the tested employee upon request. Disclosures, without patient consent, may also occur when: (1) the information is compelled by law or by judicial or administrative process; (2) the information has been placed at issue in a formal dispute between the employer and employee; (3) the information is to be used in administering an employee benefit plan; (4) the information is needed by medical personnel for the diagnosis or treatment of the patient who is unable to authorize disclosure.

EXHIBIT "A"

DRUG TESTING PROCEDURE

Employee must present himself/herself at South Coast Family Clinic with a written request from the City of San Juan Capistrano's Personnel Officer or his designee for all drug testing. The request must include the printed name, title, and signature of the person authorized to order drug testing on behalf of the City.

The employee must show some form of picture identification, and must complete all necessary registration/consent materials at the time of presentation at the clinic.

COLLECTION PROCESS

The employee will be taken to the laboratory by a South Coast Family Clinic medical assistant where the employee will receive a specimen collection bottle.

Employee will be instructed to wash his/her hands.

Medical assistant will turn off water to the restroom.

Medical assistant will introduce indicator dye to the toilet for evidence of specimen tampering.

Employee will fill the specimen bottle with at least 60 ml of urine.

Medical assistant will then read the temperature of the specimen within four (4) minutes to verify that it is a fresh specimen. If the temperature of the specimen is not within 90-100 degrees F, the patient must provide a fresh sample.

SPLIT SAMPLE PROCEDURE: Medical assistant will pour the specimen into the first bottle which is to be used for mandatory testing, and requires 60 ml of urine. Any additional urine specimen will be poured into the second specimen bottle to be used as a split sample specimen. If there is no additional urine available for the second specimen, the first shall nevertheless be processed for testing.

Medical assistant will secure the caps on the specimen bottles and affix the specimen bottle seals over the caps and down the sides of the specimen bottles in view of the employee.

Medical assistant will record the date on the specimen bottle seals. Employee will initial the specimen bottle seals.

Employee will then read and complete the Donor Consent portion of the lab requisition, including signature, date and any medications of the employee may have taken in the last 30 days.

Employee will complete, sign, and provide daytime telephone number on the certification portion of the lab requisition in case lab has any last minute questions. **Federal Regulations prohibit disclosure of the employee's identity to the laboratory.**

Medical assistant will complete all appropriate collection site information on the lab requisition form.

The Chain of Custody section will be completed by both the employee and the medical assistant. (Every time the specimen is handled, transferred, or placed into storage prior to being packaged for shipment, every individual must be identified and the date and purpose of change recorded.)

Upon completion of the collection process, the employee will be given a copy of the Drug of Abuse Test Request, the employer will be sent a copy, and the collection site will retain a copy.

Medical assistant will place the specimen bottles and all other copies of the requisition form in the shipping container.

Medical assistant will secure the shipping container and his/or her initials and date will be written on the shipping container seal.

The specimen will be overnight shipped to the appropriate laboratory for testing.

Test results will be sent directly to the City of San Juan Capistrano.