

Corpus Christi



*“Partners in the Workplace
for Excellence in Public Service”*



PROCEDURE: HR 24.0


**SUBJECT: Deferred Compensation: Buy Back of Unused Vacation
and Sick Leave Accruals**

Revised: 12/10/1998

Revised: 09/15/2003

Effective: 6/15/2004

APPROVED:



George K. Noe
City Manager

1. Purpose:

The purpose of this policy is to provide eligible employees with options to receive or defer compensation in connection with accrued, but unused, vacation and sick leave pay upon exercising buyback provisions in Sections 951.5 and 951.13 for Leave Plan I employees and Sections 952.3 and 952.14 for Leave Plan II employees, and as otherwise provided in Collective Bargaining Agreements for Police and Fire personnel covered under such Agreements. Under these Sections and/or contract provisions, the City buys back unused vacation and sick leave accrual subject to the limitations set in these Sections and/or contracts. Under this Policy, eligible employees may elect to defer the receipt and income taxation of a portion of their payment for accrued vacation or sick leave (referred to as "Accrued Leave pay") through participation in one or more Deferred Compensation Plans offered to employees by the City of Corpus Christi. These

Plans are established under Section 457 of the Internal Revenue Code of 1986, as amended (referred to in this Policy as the "IRC") and the Treasury Regulations thereunder.

2. Scope:

This Policy applies to all City employees who accrue vacation and sick leave and who are eligible to participate in Deferred Compensation Plans offered by the City of Corpus Christi. This Policy is governed by, and subject to, Section 457 of the IRC and the Treasury Regulations thereunder, as amended from time to time, and to the extent that there is a conflict between this Policy and the IRC and applicable regulations, the provisions of the IRC and the regulations, as amended, shall control.

3. Deferred Compensation Provisions - General Rules:

Effective as of January 1, 2002, under IRC Section 457, each calendar year an employee may generally defer receipt and taxation of compensation up to a maximum of (i) 100% of his/her gross compensation, reduced by pre-tax "pick-up" employee retirement plan contributions or (ii) a fixed dollar amount that is set each year, whichever is less, through a payroll deduction election made before the compensation is earned. The fixed dollar amount is \$11,000 for 2002, increased in increments of \$1,000 per year through 2006 and in increments indexed to inflation thereafter. A deferral of a payment, including a payment of Drag-up pay, must be elected before this amount is paid or made available to the employee, and Drag-up pay cannot be deferred after the employee terminates his or her employment.

4. Deferred Compensation Catch-up Provision Under IRC Section 457 in Three Years Before Normal Retirement Age:

- a. IRC Section 457 and the Treasury Regulations thereunder provide for a limited "catch-up" period to enable employees to make up for years in which they did not defer the maximum compensation allowed by law. The catch-up period is defined by federal law as one or more of the employee's last three taxable years (generally calendar years) ending before the year the employee reaches normal retirement age. No "catch-up" contributions can be made under this make-up provision in the calendar year that includes the employee's normal retirement age.

- b. For purposes of the limited "catch-up" period, "normal retirement age" is the age and date designated in writing by the employee to the City in accord with applicable Treasury Regulations for purposes of this "catch-up" provision. The normal retirement age designated by the employee must be not later than age 70½ and not earlier than the age at which the employee may retire without the consent of the City and receive immediate retirement benefits under his/her applicable retirement plan or system without any reduction in retirement benefits. The age and date specified by the employee cannot be later than any applicable mandatory retirement age, or later than the age and date at which the employee retires or terminates employment with the City. To the extent permitted by applicable Treasury Regulations, qualified police or firefighters may designate a normal retirement age for such purpose that is earlier than the age permitted under this general rule, but in no event earlier than age 40.
- c. An employee may use this "catch-up" provision only once during one or more of the three calendar years in the "catch-up" period. If this option is not used then, the opportunity to use it ends.
- d. If an employee has not deferred the maximum amount of compensation allowable during years before the "catch-up" period when he/she was eligible to participate in the Deferred Compensation Plan, the employee can "catch-up" by electing to defer the receipt of current compensation based on the difference between (i) the compensation that was eligible to be deferred in prior years, and (ii) the compensation that was actually deferred in prior years.
- e. An employee's "catch-up" contribution based on his or her underutilized limit in prior years cannot exceed the amount permitted by Section 457 and the Treasury Regulations thereunder (two times the normal fixed dollar amount in effect for that calendar year). The "catch-up" contributions cannot exceed \$22,000 for 2002, increased by \$2,000 per year through 2006.
- f. Employees who are not eligible for the "catch-up" can elect in advance to defer compensation (including Accrued Leave pay), subject to the annual deferral amount permitted by IRC Section 457. The amount of any deferral must also take into account any other deferrals of compensation elected by the employee in that calendar year.

5. Deferral of Additional Compensation Under IRC Section 457 After Attaining Age 50:

- a. An employee who is at least age 50 by the end of the year may elect to contribute an additional amount that is established for each year in excess of the normal annual dollar limit. The additional amount is \$1,000 for 2002, increased by \$1,000 per year for each year through 2006, and in increments indexed to inflation thereafter. For instance, the dollar limit for an employee who attained age 50 on

December 1, 2004 would be \$16,000 (\$13,000 normal annual limit plus \$3,000 after-50 amount).

- b. The age-50 additional contribution does not apply for any year for which a higher "catch-up" contribution limit applies. An employee who is eligible for the age-50 additional contribution in a year that is one of the employee's last three calendar years before he/she reaches normal retirement age is entitled to the larger of (i) the normal annual limit plus the age-50 additional contribution, or (ii) the catch-up contribution limit.

6. Election By Employee to Participate in a Deferred Compensation Plan:

- a. "Accrued Leave pay" may be deferred during the six-month periods of January 1st to June 30th and July 1st to December 31st. In order for an employee to be eligible to defer a portion of the "Accrued Leave pay" that he/she will be receiving, the employee must sign, date and deliver his/her election to receive or defer Accrued Leave pay on or before the last day of the calendar month immediately preceding the six-month period in which the employee will exchange accrued vacation or sick leave for cash. If the election to defer Accrued Leave pay is part of the "catch-up" contribution, the deferral must occur before the calendar year that includes his/her normal retirement age. For instance, an employee who has declared his/her normal retirement age as January 15, 2005 and who will exchange accrued vacation or sick leave for Accrued Leave pay at any time between July 1, 2004 and December 31, 2004 must sign, date and deliver his/her Accrued Leave pay election form on or before June 30, 2004. No Accrued Leave pay can be deferred by that employee as part of the "catch-up" contribution in 2005 because it is the year of his/her normal retirement age, although it can be deferred as part of the normal annual deferred compensation limit as long as the deferral occurs before the termination of his/her employment.
- b. If an eligible employee makes a timely election to defer Accrued Leave pay, the deferred Accrued Leave pay is not paid to the employee, but is invested and held in trust for the employee under the terms of the applicable Deferred Compensation Plan until the determinable date in the future selected for receipt of the deferred amounts. Income taxation of the deferred Accrued Leave pay is delayed until the deferred compensation, and any earnings on it, are made available to the employee, subject to the provisions of IRC Section 457 and the Treasury regulations thereunder.
- c. If an employee wishes to defer additional Accrued Leave pay under the "catch-up" rules of IRC Section 457, he/she must provide the City with a written certification of eligibility for the "catch-up" provision from a representative of the applicable Deferred Compensation Plan. The certification must state the calendar year(s) in which a "catch-up" deferral can be made. The employee should contact a representative of the applicable Deferred Compensation Plan for assistance in

obtaining the certification and completing the forms required by the IRS and the applicable Deferred Compensation Plan.

- d. The amount of Accrued Leave pay which may be deferred in any calendar year under a Deferred Compensation Plan depends, in part, on the amount of other compensation actually deferred by the employee during the same year.

7. Employee Responsible for Obtaining Own Income Tax Advice.

The City of Corpus Christi provides the voluntary option for employees to participate in Deferred Compensation Plans offered as a benefit to City employees. This fact in no way obligates the City of Corpus Christi for liability that may arise from any individual employee's income tax obligation under the Internal Revenue Code and/or IRS regulations. Employees who use the Deferred Compensation Plans made available by the City of Corpus Christi do so at their own risk. City employees are encouraged to obtain tax advice from a qualified tax attorney or other knowledgeable professional.

**CITY OF CORPUS CHRISTI
ELECTION FORM
FOR DEFERRED COMPENSATION**

Buy Back of Unused Vacation & Sick Leave Accruals,

HR 24.0, Revised 8/9/2004

Employee: _____

Social Security No. _____

Org. No. _____ Department: _____

Employee ID Number: _____

I elect effective this date _____, (month) (year) to defer “accrued Leave Pay” during the six-month periods of January 1 to June 30 and July 1 to December 31. I understand that my election *must be signed, dated and delivered* on or before the last day of the calendar month immediately preceding the six-month period in which I will exchange accrued vacation or sick leave for cash. I understand that if this election to defer Accrued Leave pay is part of the “catch-up” contribution that my deferral must occur *before* the calendar year that includes my normal retirement age as defined in applicable Treasury Regulations.

Check and complete only if appropriate: _____

I request to use the deferred compensation “catch-up period” provision provided for in Section 457 of the Internal Revenue Code based on the attached written certification of my eligibility for the “catch-up-provision from a representative of my applicable Deferred Compensation Plan(s), which are:

1. _____, and
2. _____

I request the City Manager to approve \$ _____ in vacation and/or sick leave accrual exchanged for cash. I understand that my timely election to defer Accrued Lave Pay must be timely and that this pay will not be paid to me, but invested and held in trust for me under the terms of the applicable Deferred Compensation Plan until the determinable date in the future selected for receipt of the deferred amounts as provided in HR 24.0.

Approved by: _____

Employee Name: _____ Date: _____

Human Resources: _____ Date: _____

Department Head: _____ Date: _____

Assistant City Manager: _____ Date: _____

City Manager: _____ Date: _____