



## **Staff Report**

**Date:** September 13, 2016

**To:** City Council

**From:** Valerie J. Barone, City Manager

**Prepared by:** Elia Bamberger, Director of Human Resources  
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**Subject:** **Considering amending Police & Procedure No. 37.17 -  
Vacation**

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### **Report in Brief**

The City of Concord's current Policy & Procedure #37.17 (Vacation Policy) was established in February 2004. Since that time, IRS regulations have been implemented which require the City to amend its vacation policy to ensure compliance. Specifically, employees seeking to "cash out" vacation hours are now required to submit an irrevocable election form in the calendar year prior with the actual cash-out occurring in the following calendar year. This issue was addressed with all of the City's bargaining groups in the course of the recently completed negotiations process for successor Memoranda of Understanding. The various bargaining groups reviewed all of the redlined policy changes, including additional clean-up language, and are in agreement with those changes.

### **Recommended Action**

Staff recommends amending Policy & Procedure No. 37.17, Vacation, to ensure compliance with IRS regulations relating to the process for receiving cash-in-lieu of vacation and to reflect clean-up language based on previously agreed to changes that occurred in prior Memoranda of Understanding that had not been reflected in the policy before.

### **Background**

The City's Vacation Policy was originally effective in February 2004. The policy currently provides employees with the option to receive a cash payment in-lieu of Vacation time off upon the request of the Department Head and with the approval of the City Manager, in order to meet unusual or emergency conditions. The employee would

be paid the straight time daily equivalent in-lieu of vacation time off. Such payment cannot exceed more than 40 hours in any one calendar year.

IRS regulations now require that cash payment in-lieu of vacation time off must be elected in the form of an irrevocable election, and such an election must be made in the calendar year prior to the receipt of any such vacation cash out. For example, an employee must complete the Irrevocable Election Form by December 31, 2016, in order to receive the cash payment in 2017.

### **Analysis**

This action ensures the City is compliant with IRS regulations relating to cash payments in-lieu of vacation. Previously, the City had permitted cash-out of vacation time within the same year in which the vacation time was accrued. The IRS, however, requires that cash-out of vacation time must be elected in the year prior to which any such vacation cash-out is to occur. Employees wishing to cash out vacation in 2017, for example, must have made an irrevocable election to do so no later than December 31, 2016 to be eligible for cash out in 2017.

The City met and discussed this IRS requirement with all of its bargaining groups during the course of the most recent negotiations process for successor Memoranda of Understanding. The parties met in good faith and reached agreement on the proposed verbiage changes to the City's existing Vacation policy. The policy now includes language which ensures compliance with the IRS regulations by requiring eligible employees to complete a form making an irrevocable election to receive cash-in-lieu of vacation, up to a maximum of 40 hours. The Human Resources Department must receive a completed form no later than the end of the calendar year in order for the employee to receive the vacation cash-out in the following calendar year. Employees will receive the cash out in the first full pay period in August, or as otherwise specified in the applicable Memorandum of Understanding.

### **Financial Impact**

The cost impact is unknown as this is a new option available to employees and there is no experience from which to calculate the cost. A conservative (i.e., likely high) estimate, assuming employees at or near their vacation maximum would cash out 40 hours in the latter part of 2017, is \$280,000 for all employee groups in FY 2017-18; this represents 155 employees, approximately 38% of the full-time workforce. However, it should be noted that this program might provide long-term savings for the City. The requirement of the Irrevocable Election Form makes it possible for employees to "cash out" vacation in a timely fashion which may decrease vacation banks which are always cashed out upon an employee separates from the City, often at a higher pay rate than when the vacation was earned.

### **Public Contact**

Posting of the agenda and notification of bargaining groups.

**Attachments**

1. Red-lined version of Policy & Procedure No. 37.17 – Vacation
2. Policy & Procedure No. 37.17 – Vacation



## CITY OF CONCORD

Number:	37.17
Authority:	Council Motion
Effective:	02-10-04
Revised:	<del>02-28-069-13-16</del>
Reviewed:	<del>2016</del> <u>2016</u>
Initiating Dept.:	HR

## VACATION

### 1. PURPOSE

It is the policy of the City of Concord to provide paid vacation leave for eligible employees subject to the procedures and limitations set forth in this Policy & Procedure.

### 2. COVERAGE

This policy applies to all classifications included in the Competitive Service. The provisions of any MOU, to the extent they conflict with the provisions of this policy, shall prevail.

### 3. DEFINITIONS

3.1 Eligible Employee(s) means full-time competitive service and appointive employees, as these terms are defined in Chapter 50, Article III, of the Concord Municipal Code, and any other employees specifically designated by the City Council. Contract employees may be provided vacation benefits as described in their employment agreements.

3.2 Managerial Employee(s) means those eligible employees assigned to executive or management classifications.

3.3 Vacation means an authorized scheduled absence from work with pay during which the employee is free from duty.

3.4 Length of service means that period of time commencing with the employee's most recent date of employment, but excluding authorized leaves of absence in excess of 365 calendar days due to illness, injury, pregnancy, or post delivery care of child and excluding all other authorized leaves of absence without pay in excess of 30 calendar days. Contract employees who are subsequently appointed to the competitive service will be credited with service for full time contract employment from the date vacation benefits were continuously included within their employment agreement.

### 4. GENERAL

#### 4.1 Vacation Accrual

4.1.1 Vacation entitlement is based on length of service as shown in Section 4.1.2 below. Vacation is accrued on a bi-weekly basis and shall be credited to an eligible employee for each bi-weekly pay period during which the employee receives at least 56 hours regular straight time pay. For purposes of vacation accrual calculations, straight time pay shall include pay for regular hours worked, pay for approved vacation, paid sick leave, compensatory time taken off with pay, pay for a holiday observed by the City, ~~three (3) hours off with pay on Good Friday~~, paid Jury Duty, or pay received from the City for Military Leave. Overtime hours worked, ~~Job Injury Leave With Pay for Police Officers~~, or any authorized leave of absence with pay other than those identified above shall not apply toward the accrual of vacation.

4.1.2 On September 9 of each calendar year, employees in pay status shall accrue an additional eight (8) hours of vacation in lieu of an Admissions Day holiday. Such vacation accrual shall occur at the end of the pay period which includes September 9 and shall be credited to the employee's vacation balance regardless of the number of hours paid during the pay period. However, such vacation accrual shall not be credited in any amount that exceeds the employee's vacation ac-

cruel maximum unless specifically authorized by, and at the sole discretion of, the City Manager after considering alternatives that may be available. The City agrees to provide advance notification to those employees who may, as a result of such crediting, exceed their vacation maximum so that they may schedule vacation time or initiate other appropriate action in order to avoid a loss. Such notification shall be with the understanding that it is the employee's responsibility to initiate the appropriate request. For purposes of this section, pay status means the employee has worked or is on authorized paid leave of absence for at least four hours on the workday prior to and following the holiday. Employees on authorized or unauthorized leaves of absence without pay are not considered to be in pay status during the leave of absence.

4.1.3 Accrual Rates

4.1.3.1 Employees in classifications assigned to the Administrative, Technical & Clerical, Field & Operations Representation Units, Professional and Peace Officer Representation Units and non-assigned Confidential employees shall accrue vacation as follows:

Accrual Years	Vacation Accrual Rate Each Bi-Weekly Pay Period	
	During Accrual Year	Approx. Annual Vacation Accrual
1 <sup>st</sup>	3.077 hours	10 days
2 <sup>nd</sup>	3.692 hours	12 days
3 <sup>rd</sup> - 7 <sup>th</sup>	4.615 hours	15 days
8 <sup>th</sup> - 9 <sup>th</sup>	4.923 hours	16 days
10 <sup>th</sup> - 12 <sup>th</sup>	5.231 hours	17 days
13 <sup>th</sup> - 14 <sup>th</sup>	5.846 hours	19 days
15 <sup>th</sup> - 19 <sup>th</sup>	6.462 hours	21 days
20 <sup>th</sup> & thereafter	6.769 hours	22 days

4.1.4 Executive and management employees, ~~including those assigned to the Police Managerial Representation unit~~, shall accrue vacation as follows:

Accrual Years	Vacation Accrual Rate Each Bi-Weekly Pay Period	
	During Accrual Year	Approx. Annual Vacation Accrual
1 <sup>st</sup>	4.615 hours	15 days
2 <sup>nd</sup>	5.321 hours	17 days
3 <sup>rd</sup> - 7 <sup>th</sup>	6.154 hours	20 days
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13 <sup>th</sup> - 14 <sup>th</sup>	7.385 hours	24 days
15 <sup>th</sup> - 19 <sup>th</sup>	8.000 hours	26 days
20 <sup>th</sup> & thereafter	8.308 hours	27 days

4.1.4.1 The City Manager may grant a Department Head a higher vacation accrual rate based on prior public service and place them accordingly on the Executive and Management Accrual Rate Schedule. Public service is defined as any local, state, federal or special district agency.

- 4.1.5 Changes in Vacation Accrual Rates. Any change in vacation accrual rates shall be effective at the beginning of the bi-weekly pay period that coincides with or follows either the completion of the qualifying years of service or change in assignment between the employee groups shown above.
- 4.1.6 Accrual Rate Upon Re-Employment, Reinstatement, or Rehire
- 4.1.6.1 Employees appointed from a Re-Employment or Reinstatement List, or rehired into the Exempt service, within one year from date of termination, will accrue vacation at the same rate that was in effect when they terminated.
- 4.1.6.2 All other rehired employees will be treated as new employees for vacation accrual rate purposes.
- 4.1.7 Maximum Accrual.
- 4.1.7.1 The maximum accrual for non-managerial employees at any one time shall be two times the amount of the employee's current vacation accrual rate, for the previous anniversary year plus the amount of the vacation accrual for the current anniversary year. With the approval of the department head, up to 40 additional days of vacation may be accumulated for a period not to exceed one anniversary year.
- 4.1.7.2 The maximum accrual for managerial employees is the equivalent of two years of vacation accrual plus 40 days, unless the Department Head denies the 40 days.
- 4.2 Vacation Usage
- 4.2.1 When possible, vacation leave should be taken within the year following the accrual year.
- 4.2.2 Employees shall request vacation usage in advance of the date for which vacation is being requested.
- 4.2.3 The department head (or designee) and employee shall schedule the times during which vacation leave is to be taken with due consideration being given to the desires of the employee and the operational needs of the department.
- 4.2.4 No vacation usage shall be provided beyond that amount accrued. The authorization by the Department Head for vacation leave shall not constitute authorization of paid vacation leave beyond the balance on hand at the time such leave is taken.
- 4.2.5 When a paid holiday falls during an employee's scheduled vacation, that day shall not be charged against the employee's vacation accrual. For all employees, including those on a variable workweek, the holiday is equal to eight hours.
- 4.2.6 In the event that an employee suffers illness or a disability while on a scheduled vacation, sick leave shall not be used in lieu of vacation.
- 4.2.7 Vacation may be used for any authorized absence (except disciplinary suspension) wherein no other paid leave resource is available.
- 4.2.8 Employees who have given their notice of intent to resign are expected to be physically present and actively at work up through the date of their termination. Except when applicable in the case of retirement, vacation shall not be used to extend an employee's service beyond the last day worked.

4.2.9 Employees granted vacation leave bank equal to the first year's accrual under the Recruitment Incentive policy may not use the vacation time prior to the first day worked.

4.3 ~~Annual Vacation Cash-Out. For the purposes of reducing excess vacation accrual, employees may elect to receive compensation ("cash-out"), annually, for a maximum of 40 hours of accrued vacation each year, so long as 80 hours two workweeks of accrued vacation remain for the benefit of the employee after the cash-out is taken. This election must be made in writing no later than December 31 of the calendar year prior to when the cash-out is scheduled to occur. By way of illustration, employees seeking a cash-out in calendar year 2017~~6~~ must submit their cash-out election by December 31, 2016~~5~~. This compensation shall occur on the first full pay period in August following submission of the irrevocable election form available in the Human Resources Department, (See Attachment A) or as otherwise specified in the respective Memoranda of Understanding for represented bargaining groups. No exceptions will be made to this policy. If the non-revocable election is not made by December 31, there will be no other opportunity to cash-out vacation accruals until/unless the non-revocable election is made by the employee on or before December 31 of the following year. Cash Payment in Lieu of Vacation Time Off. Upon request of the Department Head and with the approval of the City Manager, in order to meet unusual or emergency conditions, an employee may be paid the straight time daily equivalent in lieu of vacation time off. Such payment shall be for no more than 40 hours in any one calendar year.~~

#### 4.4 Vacation Pay upon Termination

4.4.1 Employees who terminate will be paid for the vacation accrual balance as of their last workday. Employees who have received a vacation pre-accrual credit pursuant to the Recruitment Incentive Policy will only receive that portion of unused vacation accrual, which was earned based on actual service.

4.4.2 In cases of retirement from City service, the City Manager may approve the utilization of available vacation time to extend the date of retirement.

4.4.3 Upon the death of an active employee, the payment of the vacation accrual balance shall be made to the employee's estate or to the person designated by the employee on the DESIGNATION OF PERSON TO RECEIVE WARRANTS OR CHECKS UPON DEATH OF EMPLOYEE (Form No. PER 57).

### 5. RESPONSIBILITIES

5.1 The City Manager is responsible for the overall implementation and application of the vacation policy. However, certain of the following have delegated authority or assigned responsibility.

5.2 Department Heads (or their designated representative) are responsible for ~~scheduling-authorizing~~ vacation for employees within their departments and for the accurate reporting of such vacation usage on such forms as may be required.

5.3 Department Heads and/or the City Manager regarding the application and administration of this vacation policy.

5.4 The Finance Director is responsible for maintaining a current record of the accrual, usage, and vacation balance for each eligible employee.

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Manager after considering alternatives that may be available. The City agrees to provide advance notification to those employees who may, as a result of such crediting, exceed their vacation maximum so that they may schedule vacation time or initiate other appropriate action in order to avoid a loss. Such notification shall be with the understanding that it is the employee's responsibility to initiate the appropriate request. For purposes of this section, pay status means the employee has worked or is on authorized paid leave of absence for at least four hours on the workday prior to and following the holiday. Employees on authorized or unauthorized leaves of absence without pay are not considered to be in pay status during the leave of absence.

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4.1.7.2 The maximum accrual for managerial employees is the equivalent of two years of vacation accrual plus 40 days.

### 4.2 Vacation Usage

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4.2.9 Employees granted vacation leave bank equal to the first year's accrual under the Recruitment Incentive policy may not use the vacation time prior to the first day worked.

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each year, so long as 80 hours of accrued vacation remain for the benefit of the employee after the cash-out is taken. This election must be made in writing no later than December 31 of the calendar year prior to when the cash-out is scheduled to occur. By way of illustration, employees seeking a cash-out in calendar year 2017 must submit their cash-out election by December 31, 2016. This compensation shall occur on the first full pay period in August following submission of the irrevocable election form available in the Human Resources Department, or as otherwise specified in the respective Memoranda of Understanding for represented bargaining groups. No exceptions will be made to this policy. If the non-revocable election is not made by December 31, there will be no other opportunity to cash-out vacation accruals until/unless the non-revocable election is made by the employee on or before December 31 of the following year.

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