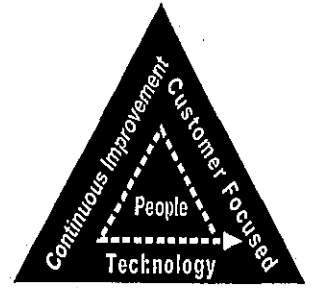


Corpus Christi



*"Partners in the Workplace
for Excellence in Public Service"*



PROCEDURE: HR 25.0

SUBJECT: Deferred Compensation: Overtime Pay

Revised: 12/10/1998

Revised: 9/15/2003

Rescinded: 6/15/2004

APPROVED:

A handwritten signature in black ink, appearing to read "G. Noe", written over a horizontal line.

George K. Noe, City Manager

Effective Date: 8-10-04

I. Purpose:

The purpose of this policy is to provide eligible Police Officers with options to receive or defer overtime pay earned. Under this Policy, eligible Police Officers may elect to defer the receipt and income taxation of a portion of their overtime pay through participation in one or more Deferred Compensation Plans offered to Police Officers 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.

II. Scope:

This Policy applies to Police Officers covered by collective bargaining agreements who earn overtime pay 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.

III. Deferred Compensation Provisions - General Rules:

Effective as of January 1, 2002, under IRC Section 457, each calendar year a Police Officer 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" Police Officer 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 overtime pay, must be elected before this amount is paid or made available to the Police Officer.

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

- a. IRC Section 457 and the Treasury Regulations thereunder provide for a limited "catch-up" period to enable Police Officers 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 Police Officer's last three taxable years (generally calendar years) ending before the year the Police Officer reaches normal retirement age. No "catch-up" contributions can be made under this make-up provision in the calendar year that includes the Police Officer'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 Police Officer to the City in accord with applicable Treasury Regulations for purposes of this "catch-up" provision. The normal retirement age designated by the Police Officer must be not later than age 70½ and not earlier than the age at which the Police Officer may retire without the consent of the City and to 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 Police Officer cannot be later than any applicable mandatory retirement age, or later than the age and date at which the Police Officer 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. A Police Officer 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 Police Officer 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 Police Officer 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 Police Officer'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. Retiring or terminating Police Officers who are not eligible for the "catch-up" can elect in advance to defer compensation (including overtime pay) in the calendar month in which they retire or terminate, 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 Police Officer in that calendar year.

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

- a. A Police Officer 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 Police Officer 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. A Police Officer who is eligible for the age-50 additional contribution in a year that is one of the Police Officer'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.

VI. Election By Police Officer to Participate in a Deferred Compensation Plan:

- a. In order for a Police Officer to be eligible to defer a portion of his/her overtime pay that he/she will be receiving, the Police Officer must sign, date and deliver his/her election to receive or defer overtime pay on or before the last day of the calendar quarter (March, June, September or December) immediately preceding the calendar quarter in which the Police Officer will earn the overtime pay. For

instance, a Police Officer who wants to defer overtime pay to be earned between January 1, 2005 and March 31, 2005 must sign, date and deliver his/her overtime pay election form on or before December 31, 2004. Overtime pay cannot be deferred by an Police Officer as part of the "catch-up" contribution in 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 Police Officer makes a timely election to defer overtime pay, the deferred overtime pay is not paid to the Police Officer, but is invested and held in trust for the Police Officer 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 overtime pay is delayed until the deferred compensation, and any earnings on it, are made available to the Police Officer, subject to the provisions of IRC Section 457 and the Treasury regulations thereunder.
- c. If an Police Officer wishes to defer additional overtime 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 Police Officer 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 overtime 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 Police Officer during the same year.

VII. Police Officer Responsible for Obtaining Own Income Tax Advice:

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

CITY OF CORPUS CHRISTI ELECTION FORM FOR DEFERRED COMPENSATION

Overtime Pay, HR 25.0

(Applies Only to Police Officers Eligible for Overtime and
Covered by Collective Bargaining Agreement)

Employee: _____

Social Security No. _____

Activity No. _____ Department: _____

Employee ID Number: _____

I elect effective this date (month) (year) to defer a portion of my overtime pay. I understand that I must sign, date and deliver my election to receive or defer overtime pay on or before the last day of the calendar quarter (March, June, September or December) immediately preceding the calendar quarter in which I will earn the overtime pay.

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 that specifies states the calendar years in which a "catch-up" deferral can be made. I understand that this certification must be signed by a representative of the applicable Deferred Compensation Plan(s), which are:

1. _____

2. _____

Month and Year of my retirement or termination: _____

Employee Name: _____ Date: _____

Approved by:

Human Resources: _____ Date: _____

Department Head: _____ Date: _____

Assistant City Manager: _____ Date: _____

City Manager: _____ Date: _____