COUNCIL AGENDA: 4-24-07
ITEM: 3.3

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Kay Winer

SUBJECT: **MILITARY LEAVE PROGRAM FOR CITY EMPLOYEES**

DATE: 03-07-07

Approved

Date 3/12/07

COUNCIL DISTRICT: N/A
SNI AREA: N/A

RECOMMENDATION

Accept staff report regarding

- New comprehensive orientation program for all employees applying for supplemental military leave benefits, including a method to obtain customer feedback.
- Further improvements to the reconciliation process, including the overpayment and underpayment of supplemental military pay; and
- Information on pays that are included by City Council action, as well as those that have been excluded as a result of past Council actions.

OUTCOME

This report responds to Council direction in December 2006 to provide a copy of the new supplemental military leave orientation packet that includes military reservists with clear information on how the reimbursement process works and identifies the documents required by the City for payment. The report also responds to the Council directive to report back on the status of supplemental pay overpayments and underpayments, repayment options for reservists with a balance due the City and a reconciliation process that is performed in accordance with the City's military leave supplemental pay policy.

BACKGROUND

On December 5, 2006, the Council approved staff recommendations to improve communications with employees who are military reservists, and to implement new procedures that expedite the

military supplemental pay reconciliation process. In addition, staff was directed to:

- Report back to Council when the orientation packet was completed and, thereafter, report quarterly to Council with customer feedback from reservists regarding the effectiveness of the program.

- Work with reservists to ensure that the estimates used to pay supplemental military leave benefits during active duty are as precise as possible so that the amount of overpayment or underpayment determined by a post-service reconciliation to actual pay is minimized.

- Return to Council with options for settling overpayments and underpayments determined by post-service reconciliations to actual pay.

- Review previous reports to verify the intent of prior Council actions regarding what military pay items are included or excluded from post-services reconciliations and to see if there are any opportunities to favorably affect the result of the reconciliations of reservist pays.

ANALYSIS

New Pre-Activation Orientation

Attached are components of a new Military Leave Orientation Packet designed to give employees a better understanding of the City's current polices related to Military Leave.

- A question and answer document that describes the applicable laws, types of military leave and the manner in which the City will apply the laws, as well as the actions of Council as provided by Resolution, to each type of military leave (Attachment A) .
- A copy of the revised City Military Leave Policy that incorporates the Council's past actions to provide supplemental salary and benefits, beyond what is required by law (Attachment B).
- Human Resources internal use document that the department uses as its format for meeting with employees to ensure the employee is aware of the City's policies (Attachment C).
- Revised Agreement for employees seeking supplemental pay and benefits that is to be signed by the employee and the City (Attachment D).

Once notified of anticipated active duty military leave, HR and Finance will host a meeting with the employee to review the new orientation packet to insure that all questions are answered in person by the responsible department. An important feature of the new procedure is for the employee to designate a local contact person who will be a communication link who is also authorized to act on behalf of the employee.

Based on the military orders submitted by the employee prior to the meeting, Finance/Payroll will research the U.S. Military's internet site to determine the expected basic pay, housing allowance, and other military pays for the employee. Together, Finance/ Payroll and HR will determine the initial amount of the City supplemental military pay benefit and present the calculation to the employee at the orientation meeting. In addition, Finance /Payroll will explain the reconciliation process that will occur upon the employee's return from duty.

If the pre-activation meeting cannot occur with the employee because there is insufficient time between the receipt of the military order and the date the employee must report for active duty, HR will make arrangements with the contact person designated by the employee to attend the orientation meeting in the employee's place.

New Customer Service during Activation

Since April 2005, per Council policy, employees have been required to submit all military pay stubs on a timely basis and Finance / Payroll has had the authority to stop supplemental military leave pay benefits if stubs were not received. Though benefits were never suspended, HR and Finance/Payroll have now established new standardized procedures that inform employees and their local contacts of outstanding pay stubs, allowing three pay cycles of delinquency before benefits are stopped, and requiring the concurrence of both HR and Finance Payroll before such stoppage.

In addition, Finance / Payroll will evaluate each pay stub as received and adjust employee supplemental military pay benefits promptly based on any change in military pays. This will ensure that future post-activation pay reconciliations do not result in unusually high underpayments or overpayments of supplemental military leave benefits. Experience with the April 2005 policy change when the automatic payment 25% military pay was eliminated already has demonstrated the positive effect this kind of approach can achieve. Active duty tours since that time are showing smaller reconciliation adjustments.

New Post-Activation Debriefing and Feedback

HR will conduct a personal meeting with each reservist upon their return to employment from active military duty to reorient them to employment with the City and to obtain feedback concerning the effectiveness of the program.

New Post-Activation Reconciliation and Notification

Once notified of an employee's return from active duty military service, Finance Payroll will review the employee's file for any outstanding documentation required to complete the reconciliation of the estimated supplemental military leave benefits paid during the employee's tour of duty to actual benefits. This reconciliation also will include ensuring that service credit is properly recorded with Retirement Services and that the City has paid the employee's share of the retirement contribution during the active duty with the U.S. military.

If there is any documentation required, Finance/ Payroll will promptly send a letter to the employee requesting the required documentation with a copy provided to HR and the employee's department head. If the employee does not respond to a third letter requesting this documentation, Finance/ Payroll will refer the case to HR for alternative methods of obtaining the documentation.

Once Finance/Payroll has received all necessary documentation, it will work with HR and Retirement Services to complete the reconciliation within 30 days and send a letter to the employee that includes a summary of the reconciliation calculation and explanation of settlement procedures and options. This letter will offer a meeting with HR and Finance/Payroll if the employee desires additional detail on reconciliation calculations or wishes to discuss the settlement options. The letter will give the employee 30 days to respond.

New Settlement of Underpayments

Where an employee has been underpaid supplemental military benefits, the City will notify the employee by letter that the underpaid amount will be paid in the next regular pay check in a lump sum once the employee confirms acceptance of the result of the reconciliation. If the employee has not responded to the notification letter within 30 days and asked for a meeting to discuss the reconciliation results or settlement method, the City will assume acceptance and pay the underpayment as a lump sum on the next regular pay check.

New Settlement of Overpayments

When an employee has been overpaid supplemental military benefits, the notification letter will state that the City's usual practice is to recover the overpayments over the same amount of time that the overpayments occurred. The letter will state that, in the case of active military duty, the entire tour length will be the standard repayment period regardless of how frequently overpayments occurred during the tour. However, the letter will state an employee may request a different timing for the recovery of the overpayment and that the City will be flexible. If the employee has not responded to the notification letter within 30 days and asked for a meeting to discuss the reconciliation results or settlement method, the City will assume acceptance and collect the overpayment according to the usual practice of collecting the overpayments over the same amount of time that the overpayments occurred, beginning with the next regular pay check.

Some of the alternative repayment methods offered to employees, subject to provisions in applicable Memorandum of Agreements (MOA's) that may govern these options include:

- Sellback or use of accrued vacation leave
- Sellback or use of accrued compensatory time
- Extended payback periods

If the bargaining unit's MOU does not include vacation sellback, an exception may be made on a one-time basis where the payments owed to the City are substantial.

Status of Reconciliations as of March 3, 2007

Staff has been providing reports that are included in the City Manager's weekly reports to the Mayor and Council. The reconciliation process for the supplemental military pay program continues to show steady progress. During the past week, Finance/Payroll completed reconciliations for 6 reservists representing 18 past tours. The total number of reservists called to duty since January 2003 remains at 58 employees who have served 356 total tours. This count includes 6 reservists on current tours as of the week ending March 3, 2007. Payroll has received complete documentation from 44 reservists for 320 past tours and 319 (99%) of these have been reconciled. Payroll is waiting for full documentation from the remaining 14 reservists representing 30 past tours.

Review of Military Pays Used in Reconciliation:

The following chart lists the various military pay types that are included for the purpose of estimating supplemental military pay benefits during active duty and for the purpose of reconciliation when the reservist returns to work. Staff believes that this listing accurately reflects the intent of prior Council actions regarding the provision of supplemental military pay.

Chart of Military Pay Type

Military Pays Included in Supplement Pay Calculation

Military Pay Types	Description of Allowance	Reconciliation Guideline
Basic Pay	Based on reservist's rank and years of service. (Compensation)	Included in computation since inception of the program
Basic Allowance for Housing (BAH)	Intent of BAH is to provide reservists with equitable housing compensation based on local housing costs. Based on rank, permanent zip code, and dependency status. (Compensation)	Included in computation since inception of the program
Basic Allowance for Housing (BAH)Orders under Title 10	Reservists called to active duty under Title 10 (presidential recall) are typically provided with government housing when they are called to active duty. The BAH that they receive is intended as a part of their total Regular Military Compensation and not as reimbursement for expenses incurred as a result of being called to active duty.	Included in supplemental pay computations after January 1 of 2003 per Council Resolution 71443, 03/18/2003
Allowance for Housing Orders other than Title 10	Reservists called to active duty under orders other than Title 10 may incur out of pocket expenses for housing that are not reimbursed by the military.	Included in supplemental pay computations since inception, unless reservists provides documentation to specify non-reimbursable expenses

Family Separation Allowance (FSA or FSH) - Type I	FSA Type I is intended to pay for added housing expenses resulting from separation of a reservist from their dependents, and is only payable when the reservist is on permanent duty in Alaska or outside of the United States. (Reimbursement)	Included in supplemental pay computations from inception to December 31, 2004.
Family Separation Allowance (FSA - Type II)	FSA Type II is intended to provide compensation for added expenses incurred because of a family separation and is payable in instances in which the reservist is separated from their family for more than thirty (30) days. (Reimbursement)	Included in supplemental pay computations from inception to December 31, 2004.
SPECIAL PAYS		
Flight Pay, Diving Pay, Sea Pay, Submarine Duty Pay	Designed to compensate service members in certain missions with certain skills and to retain them in the military. (Compensation)	Included in supplemental pay computations from inception.
Imminent Danger Pay (IDP)	IDP recognizes through additional compensation service members who are subject to the threat	Included in supplemental pay computations from inception.
Hardship Duty Pay for Location (HDP-L)	Paid in recognition of the extraordinarily arduous living conditions, excessive physical hardship, and/or unhealthful conditions that exist in the area. (Compensation)	Included in supplemental pay computations from inception.
Hazardous Duty Incentive Pay (HDIP)	Paid to reservists for certain assignments including demolition work, flight duty, and exposure to certain toxic items and parachuting. (Compensation)	Included in supplemental pay computations from inception.
Conus Cola (COLA)	The Cost-of-Living Allowance or COLA is an allowance paid to service members stationed in high-cost areas overseas (including Alaska and Hawaii). COLA helps maintain purchasing power so you can purchase about the same goods and services overseas as in the United States.	Included in supplemental pay computations from inception.

Military Pays EXCLUDED From Supplemental Pay Calculation

Military Pay Types	Description of Allowance	Reconciliation Guideline
Basic Allowance for Subsistence (BAS)	Meant to offset costs for a reservist's meals and is not intended to offset the costs of meals for family members. BAS is based on the price of food as measured by the USDA food cost index. (Reimbursement)	Excluded from supplemental pay computations after December 31, 2004 per council agenda item 3.4 on 3/16/2005
Per Diem, Travel & Transportation Allowances	Intended to reimburse a member of the military for expenses associated with travel or temporary duty, including lodging, meals, airfare, etc. (Reimbursement)	Excluded in supplemental pay computations from inception of program
Combat SGLI, TSGLI	The Combat Servicemember's Group Life Insurance allowance may be a one-time entitlement (single month only) or a continuous entitlement (duration of deployment). The allowance is equal to the monthly cost of $150,000 SGLI coverage plus the cost of Traumatic SGLI coverage.	Excluded in supplemental pay computations from inception of program
Family Separation Allowance (FSA or FSH) - Type I	FSA Type I is intended to pay for added housing expenses resulting from separation of a reservist from their dependents, and is only payable when the reservist is on permanent duty in Alaska or outside of the United States. (Reimbursement)	Excluded from supplemental pay computations after December 31, 2004, per council agenda item 3.4 on 3/16/2005
Family Separation Allowance (FSA - Type II)	FSA Type II is intended to provide compensation for added expenses incurred because of a family separation and is payable in instances in which the reservist is separated from their family for more than thirty (30) days. (Reimbursement)	Excluded from supplemental pay computations after December 31, 2004, per council agenda item 3.4 on 3/16/2005

Other Related Items

Veterans' preference: HR is planning to incorporate a veterans' preference into the City's hiring system for a variety of entry level positions which require candidates to complete an entrance exam. This preference is currently in a noticing stage with the various employee bargaining units to satisfy possible meet and confer obligations. A veterans' preference in hiring will likely be presented to the Council for consideration later this year.

Coordination opportunities with the Department of Defense: Staff is working with the City's federal lobbying to initiate communications with the Department of Defense to explore options for better cooperation of reservist pay information.

Bi-monthly meetings with interested bargaining units: Staff will establish a bi-monthly meeting schedule with representatives from affected employee bargaining units to exchange feedback on the administration of the program.

PUBLIC OUTREACH/INTEREST

- ☐ **Criteria 1**: Requires Council action on the use of public funds equal to $1 million or greater.
  (Required: Website Posting)
- ☐ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

COORDINATION

This report was coordinated with the Office of Employee Relations, Human Resources, Finance, Retirement Services and the City Attorney's Office.

COST SUMMARY/IMPLICATIONS

The adopted budget already provides full salary and benefits for the employees currently on active duty military leave; therefore, no additional appropriations will be required to fund the recommendation, since these personnel costs are currently budgeted.

CEQA

Not a project.

Kay Winer
KAY WINER
Chief Deputy City Manager

Attachments

For questions, please contact Kay Winer, Chief Deputy City Manager at 535-8130.

A

City of San Jose
Human Resources Department
QUESTIONS & ANSWERS ON MILITARY LEAVE

The following questions (**Q**) and answers (**A**) attempt to clarify some of the complex laws on military leave for City employees. If any answers are found to conflict with the laws, the laws are controlling. Employees may be entitled to additional rights and benefits and/or required to meet additional conditions that are not included in the answers below.

As soon as employees know when they will be on military leave they must notify their supervisor and contact Human Resources to ensure that they receive the benefits they deserve for serving our county.

Q1. What laws apply to City employees on military leave?

A1. The Federal, State and City laws as cited below apply to City employees on military leave.

Federal: Uniformed Services Employment & Reemployment Rights Act (USERRA) 38 U.S.C. § 4301 et seq.

State: Military & Veteran's Code (MVC) § 398 et seq.

City: Resolution No. 73180

Q2. What are the definitions of "temporary military leave," "active duty for war or national emergency," and "inactive duty training"?

A2. Temporary Military Leave: Means a leave of absence from public employment to engage in ordered military duty for a period which by the order is not to exceed 180 calendar days including travel time for purposes of active military training, encampment, naval cruises, special exercises or like activity as a member of the reserve corps or force of the armed forces of the United States, or the National Guard, or the Naval Militia [MVC § 389(a)].

Active Duty for War or National Emergency: Means an employee is ordered into active duty in time of war or national emergency as proclaimed by the President or Congress, an order or request of the United Nations to serve outside the United States or their territories, or any National Conscription Act [MVC § 395.1(a)]. The President proclaimed a national emergency by reason of certain terrorist attacks occurring on September 11, 2001 [Proclamation 7463; 66 FR 48199, September 18, 2001].

Inactive Duty Training: Means an employee is ordered into inactive duty training as a member of the reserve corps or force of the armed forces of the United States, or the National Guard, or the Naval Militia. Inactive duty training includes monthly weekend drills.

Q3. Do employees on military leave receive their salaries?

A3. The City's obligation under State law to pay an employee's salary depends upon the type of leave as described below. See answer to question 2 for definitions of the various types of military leaves used below.

Employees with at least one year of City service or combined military/City service who are on temporary military leave (i.e., active duty for training, encampment, naval cruises, special exercises or like activity) are entitled to their pay for the first 30 calendar days [MVC § 395.01(a)].

Employees with at least one year of City service on active duty for other than temporary military leave are entitled to their pay for the first 30 calendar days [MVC § 395.02]. Exception: National Guard members are entitled to 30 days of pay regardless of length of City service [MVC § 395.05]. Resolution No. 73180 entitles all employees, regardless of length of service, to pay for the first 30 calendar days of active duty for other than temporary military leave or inactive duty training.

Employees on inactive duty training (i.e., drills) are not entitled to their salary [MVC § 395.01(b)]. Departments will work with employees attending inactive duty training to revise work schedules to allow for as little financial impact as possible to the employee.

Q4. If an employee has received paid military leave for the first 30 calendar days and remains on military leave into the following fiscal year, is the employee entitled to another 30 days of paid leave for the following fiscal year?

A4. No. An employee who has received paid military leave for the first 30 calendar days is entitled to no more than 30 calendar days of paid leave for any one military leave of absence (includes multiple orders extending the leave) or during any one fiscal year (fiscal year: July 1st to June 30th) [MVC § 395.03]. The City will count each day of active duty as a calendar day for purposes of this provision. Resolution No. 73180 entitles employees to 30 calendar days of paid leave for each fiscal year in the event a single military leave of absence exceeds 365 days.

Q5. If an employee has received multiple military activations during the fiscal year, is the employee entitled to 30 days of paid leave for each of the activations?

A5. No. An employee who has received multiple military activations during a fiscal year is entitled to no more than 30 calendar days of paid leave during any one fiscal year (fiscal year: July 1st to June 30th) [MVC § 395.03]. However, the first military activation during the next fiscal year restarts a new round of 30 calendar days of fully paid military leave.

Q6. Does the City provide pay and/or benefits beyond what is required by law?

A6. The City has established, by Resolution, pay and benefits that exceed those required by law.

Q7. What requirements are there for me to receive pay and/or benefits in excess of what is required by State and/or Federal law?

A7. To be eligible to receive supplemental pay and/or benefits, an employees' military salary and add-ons cannot exceed their City earnings. If eligible, to receive pay and/or benefits that exceed those required by law, an employee must enter into a contractual agreement with the City. This agreement requires an employee to return to work at the conclusion of his military service (unless disabled) and work for the City for a minimum of six months upon their return. Upon return from active duty an employee may also meet this six month requirement if they elect and are granted a service or disability retirement. In addition, in the event there is any overpayment to the employee, the employee is contractually bound to reimburse the City for this overpayment. The employee must, during their leave of absence, continually provide the City with military pay stubs documenting all military earnings. In the event the City does not receive documentation required, supplemental pay and benefits will be stopped.

Q8. Can employees use their accrued paid leave benefits when on military leave?

A8. Yes, employees, upon their request, may use any accrued vacation on similar paid leave (e.g., vacation or compensatory time) when on paid military leave. Employees cannot be required by the City to use their accrued paid leave during their military leave [38 U.S.C. § 4316(d)]. However, employees cannot receive both their accrued paid leave and the supplemental wage benefit at the same time.

Q9. Do employees continue to accrue paid leave benefits when on military leave?

A9. Employees returning from military leave will receive their accrued paid leave benefits (i.e., vacation and sick leave) depending on the type of leave as described below and provided that they meet all other considerations specified in the applicable laws.

Temporary Military Leave: Employees with at least one year of City service or combined military/City service who are on temporary military leave (including inactive duty training), will continue to accrue the same vacation and sick leave privileges for up to a maximum period of 180 days [MVC § 395(d)].

Active Duty for War or National Emergency: Employees absent on active duty in time of war or national emergency as proclaimed by the President or Congress, an order to request of the United Nations to serve outside the United States or their territories, or any National Conscription Act in effect are not entitled to sick leave or vacation (including personal holiday leave) accrual [MVC § 395.1(b)] except as provided to employees on paid military leave [38 U.S.C. § 4316(b)(1)(B)] or as provided by Resolution of the City Council. Resolution No. 73180 enables employees called to active duty for war or national emergency to accrue both vacation and sick time in the same manner as if they were working.

Q10. What is the accrual rate for vacation and sick leave for employees when they return from military leave?

A10. Employees who return from any type of military leave will begin earning vacation and sick leave at the same accrual rate they would have received if they had remained on the job [38 U.S.C. § 4316(a)].

Q11. What retirement benefits do employees receive when the employee returns from military leave?

A11. When an employee returns to employment from active duty military leave in accordance with State law the employee will be entitled to the retirement benefits the employee would have accrued had the employee not been absent leave [MVC § 395 & 395.1]. Action is required by both the employer and the employee to obtain service credit for active duty military leave. Employees must contact Human Resources and the Retirement office to complete the appropriate forms to receive the retirement service credits when returning from an unpaid military leave (including military leave when receiving the supplemental wage benefit).

Q12. Do employees on military leave continue to accrue seniority in the classified service?

A12. Yes. An employee is entitled to the seniority and other rights and benefits determined by seniority that the employee had on the date of the commencement of military leave (includes active duty, active duty for training, inactive duty training, etc.) plus the additional seniority and rights and benefits that the employee would have attained if the employee had remained continuously employed [38 U.S.C. § 4316(a)].

Military leave cannot be used to substitute for actual work time in meeting a probationary work period requirement. Probationary employees will be required to complete their probationary period when they return from active duty.

Q13. What additional military leave benefits not required under Federal and State laws am I eligible to receive?

A13. The City provides the following additional leave benefits for full-time employees that are involuntarily called to active military duty in support of the war on terrorism. Pursuant to Resolution No. 73180, to be eligible, employees must provide copies of their official orders and military pay records to the City, as well as sign a contractual agreement with the City, to receive these additional benefits. However, there is no requirement for minimum City service or combined Military/City service to be eligible for these additional benefits.

Supplemental Wage Benefit: Eligible employees on unpaid military leave may be eligible to receive an additional paid military leave benefit equal to the difference between their gross pay and allowances from the military and their gross wages from the City including most premium and additional pays. (i.e., adjusted hourly rate) subject to all necessary and appropriate deductions and withholdings.

Health/Dental/Life Insurance: Eligible employees will continue receiving coverage under their insurance benefit programs as if the employee had been on full-time duty with the City. If employee contributions are required, employees must continue to pay their contribution each month or coverage will be revoked. If the employee's military pay stub is submitted in a timely manner, the employee contribution will be deducted from the employee's supplemental wage benefit. As an alternative, employees or their designee may send a payment for the employee contribution each month to the Employee Benefits Division of the Human Resources Department.

Q14. What is considered to be the gross wages from the City when determining the supplemental wage benefit?

A14. Gross wages from the City is the employee's adjusted hourly rate that includes the employee's base salary with all additional compensation paid on an hourly basis including hourly skill pays that the employee received prior to leaving for military leave. The adjusted hourly rate also includes any scheduled automatic step increases that the employee would have received had the employee not been absent. See Q17 related to merit (including probationary) increases. The adjusted hourly rate includes per diem skill pays or other similar special pays (e.g., Bomb Tech, Motorcycle Officer, Field Training Officer, Anti-Terrorism, POST).

Q15. What can employees do when ordered into active military duty to reduce hardships for them and their families and enable them to receive any paid military leave benefits including supplemental wage benefits and health insurance coverage?

A15. Employees are required to provide their departmental payroll/HR office, as well as central Human Resources, a copy of their official military orders as soon as possible to determine what benefits they are entitled to. Prior to their military leave, employees are encouraged to contact their departmental payroll/HR office for a direct deposit of their City paychecks and procedures to continue their health insurance coverage.

Q16. What happens to an employee's supplemental wage benefits if there are any subsequent military pay adjustments?

A16. If there are any subsequent pay adjustments made by the military, the City will make the appropriate adjustments to the supplemental wage benefits paid to the employee. If the pay adjustment made by the military resulted in an underpayment of the supplemental wage benefit, the City will pay the employee for the underpayment as soon as possible. If the pay adjustment made by the military resulted in an overpayment of the supplemental wage benefit, the employee will be required to return the money owed the City. In this situation, the employee can choose to make a one-time payment to the City or arrange an extended payback plan with the City. The City's Human Resources Department is responsible for approving all Military leaves, contracting with eligible employees for supplemental pay and/or benefits and notifying Finance. City's Finance Department is responsible for calculating rates and adjustments for military supplemental wage benefits and is responsible for implementing the Human Resources approved transactions through payroll.

Q17. What happens to an employee's supplemental wage benefits if there is any cash settlement for accrued military leave pay from the military?

A17. If an employee receives a cash settlement for any accrued military leave pay from the military, the amount of the cash settlement must be reported and be included in the gross pay and allowances from the military when determining the supplemental wage benefit.

Q18. Do employees receive supplemental wage benefit and/or City-paid health insurance coverage during the period between their separation form military service and their return to work?

A18. Employees do not receive the supplemental wage benefit or City-paid health insurance during the period between their separation from military service and their return to work unless the employee uses City accrued leave. Employee's who choose to take unpaid leave after separation from the military service, must contact their departmental payroll/HR office for arrangements to pay both the City paid portion and any employee paid portion to continue their health insurance coverage after their separation from military service. In addition, employees need to notify their departmental payroll/HR office, and central Human Resources, when they plan to return to work so they can make arrangements for the City to start paying the City's portion to continue their health insurance.

Q19. Do employees on military leave receive step increases they would have received and had they not been absent?

A19. Employees may receive step increases depending if they are eligible for automatic step increases (i.e., based on seniority) or performance-based increases (i.e., based on merit) as described below.

Automatic Step Increases: Employees who are eligible for automatic (not performance-based) step increases will have their pay rate adjusted to include any scheduled step increases they would have received had they not been absent on military leave [38 U.S.C. § 4316(a)].

Performance-based Step Increases: Employees who are eligible for performance-based increases and are absent on military leave during their entire evaluation period will have their pay rate adjusted to include any scheduled performance-based step increases they would have received had they not been absent on military leave. However, employees who are eligible for performance-based step increases and are absent on military leave less than the entire evaluation period, or employees who have not yet completed a probationary work period) will have their pay rate adjusted to include any scheduled performance-based step increases only if they receive an overall performance evaluation rating of "satisfactory" or higher.

Q20. How long can an employee returning from military service delay in seeking reinstatement to his or her previous position?

A20. Employees returning from active duty after serving in time of war or national emergency must seek reinstatement with his/her employer within 6 months after completing his or her military service, but not later than 6 months after the end of the war, emergency, etc.

An employee on military leave for reasons other than war or national emergency must seek reinstatement with his or her employer within a manner and time frame that depends on the length of his or her military leave. The federal law provides that for a leave of less than 31 days, the employee must report to the employer no later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of the period of service. For a leave of more than 30 days but less than 181 days, the employee must submit an application for reemployment with the employer not later than 14 days after the completion of the period of service. For a leave of more than 180 days, the employee must submit an application for reemployment with the employer within 90 days after the completion of the period of service. 38 U.S.C. § 4312(e)(1).

Q21. What if an employee elects to receive supplemental salary and/or benefits from the City and does not return to City employment after military service or if I am overpaid by the City?

A21. In the event an employee has received supplemental salary and/or benefits from the City in excess of what is required by law, and does not return to City employment, the City will work out a payment arrangement for the employee to repay the City for the supplemental salary and/or benefits received.

In the event an employee is overpaid supplemental salary and/or benefits during his or her military service, in excess of what is required by law, the City will work out a payment arrangement for the employee to repay the City for the supplemental salary and/or benefits received.

Q22. What are the remedies for employees whose employers violate the MVS?

A22. MVC § 394(f) provides that it is a misdemeanor to discriminate against members of the military because of their membership in the military. Further, any person that discriminates against a member of the military is liable for actual damages and reasonable attorney's fees incurred by the injured party.

Q23. What government agencies can be contacted for advice about compliance with the above laws?

A23. USERRA is administered by the United States Department of Labor, through the Veterans' Employment and Training Service (VETS). VETS provides assistance to those persons experiencing service connected problems with their civilian employment, and provides information about USERRA to employers. To learn more information, log onto the Department of Labor's website at www.dol.gov, or contact VETS at (202) 693-4701.

Employers and employees can also receive information by contacting the National Committee for Employer Support of the Guard and Reserve (ESGR) at 1-800-336-4590, or at their website www.esgr.org. The ESGR promotes cooperation and understanding between military reservists and their employers and assists in the resolution of conflicts arising from an employee's military commitment.

DRAFT

Military Leave 4.2.2

PURPOSE

This section describes the policies and procedures related to the use of military leave by City employees.

AUTHORITIES

Federal: Uniformed Services Employment & Reemployment Rights Act (USERRA) 38 U.S.C. § 4301 et seq.

State: Military & Veteran's Code (MVC) § 398 et seq.

City: Resolution 73180

POLICY

Officers and employees of the City of San José are entitled to benefits for military service in accordance with applicable laws of the State of California and the Federal Government. Benefits in addition to those described in this policy may be provided by Resolution of the City Council. Direction regarding allowance of military leave for individual cases may be obtained by contacting Human Resources.

1. Qualifying Employee

Any City employee who is a member of the Reserve Corps of the Armed Forces of the United States, the National Guard, or the Naval Militia shall be entitled to a military leave of absence while engaged in military duty ordered for the purpose of temporary military leave, active duty for other than temporary military leave and inactive duty training.

2. Compensation While on Military Leave of Absence

Employees with at least one year of City service or combined military/City service who are on temporary military leave (i.e., active duty for training, encampment, naval cruises, special exercises or like activity) are entitled to their pay for the first 30 calendar days [MVC § 395.01(a)].

Employees with at least one year of City service on active duty for other than temporary military leave are entitled to their pay for the first 30 calendar days [MVC § 395.02]. Exception: National Guard members are entitled to 30 days of pay regardless of length of City service [MVC § 395.05]. Resolution No. 73180 entitles all employees, regardless of length of service, to pay for the first 30 calendar days of active duty for other than temporary military leave or inactive duty training.

Employees on inactive duty training (i.e., drills) are not entitled to their salary [MVC § 395.01(b)]. Departments will work with employees attending inactive duty training to revise work schedules to allow for as little financial impact as possible to the employee. Paid military leave is not available for this purpose.

3. Definition of One (1)Year

For purposes of military leave, the one (1) year period will be based upon the City's fiscal year, which begins on July 1 and ends on June 30.

4. Supplemental Compensation and Benefits

From time to time the San Jose City Council authorizes additional paid leave and benefits to military reservists called to active duty beyond the thirty (30) days of leave as specified in this policy. For example, City of San Jose Resolution No. 73180 provides City employees called to active military duty related to terrorist attacks or impending or actual armed conflict with supplemental salary, health and dental insurance, and retirement contributions from January 1, 2003 through December 31, 2007. Resolution No. 73180 is intended to provide for the differential between City compensation and active military duty compensation.

If called to active duty, please follow the instructions in the procedures section below. Please contact Human Resources at 535-1285 to determine if your active duty assignment qualifies for supplemental compensation and benefits under Resolution No.73180.

5. Military Leave Liaison

The City Manager's Office functions as the City's ***Military Leave Liaison*** and is available to help resolve any questions or concerns employees may have regarding Military Leave. In addition, each Department's Human Resource Liaison(s) are available to help answer any questions or concerns employees may have.

PROCEDURES

REQUEST FOR TEMPORARY MILITARY LEAVE

Employee

1. Receives Notification and/or Written Orders.

2. Requests military leave by completing "Request for Leave of Absence" available from the intranet at http://www.csj.gov/hrps/leave.pdf. In the event of receiving verbal orders, which require reporting to duty within twenty-four (24) to forty-eight (48) hours, the employee should notify his/her supervisor and/or department and fill out the Request for Leave of Absence form. Upon return from military service the employee should institute all normal procedures for requesting military leave.

If the length of the intended leave is greater than thirty (30) days, the employee should contact Human Resources to determine if the leave qualifies for salary and benefits continuation under Council Resolution.

3. Submits the Request for Leave of Absence form with orders attached from the appropriate military authority to his/her supervisor and the Department Director or designee for approval.

   Military orders must be on official letterhead, state reporting and release dates of duty, and be signed by a recognized authority.

   If a travel day is needed, the employee should request such travel day on the Request for Leave of Absence form. The travel day shall be included in the thirty (30) calendar days of paid military leave.

   The employee, the Department Director or designee, and the City Manager or designee must sign the Request for Leave of Absence form.

Department

4. Approves and forwards the Request for Leave of Absence form and the military orders to Human Resources, Attn: Transactions.

Human Resources: Transactions Division

5. Reviews form for completeness, correctness, and legality; notifies employee's department if pay problems exist or changes are needed; authorizes leave on behalf of the Director of Human Resources; records and distributes leave information to affected departments.

   If the employee has used over thirty (30) calendar days of military leave within the fiscal year the leave is disapproved as a paid leave and the employee's department is notified. The employee may be permitted to go on military leave without pay (using available leave) up to an additional 150 days per fiscal year. <u>However, dependent upon the reason for activation or training the employee may be eligible to receive supplemental benefits beyond the initial thirty (30) days. The employee should contact Human Resources for further information.</u>

CHANGE OF ORDERS

Employee

6. In the event military orders are changed, notifies his/her department and the Human Resources for resetting of authorized leave dates and submits new military orders. Failure to do so is cause for disciplinary action.

PAYROLL RECORDS WHILE ON APPROVED MILITARY LEAVE

Department	7. Notifies Human Resources that the employee is on Military Leave and sends the approved Leave of Absence form with copies of the military orders to Human Resources. Marks time sheet with regularly scheduled hours, and notes that the employee is on Military Leave.
Finance	8. Makes any necessary adjustments to payroll records.

RETURN FROM MILITARY LEAVE

Employee	9. If the absence is less than thirty (30) calendar days, no further action is necessary as leave is recorded on timesheets and logged in on the Human Resources and Payroll System. If the absence is thirty (30) calendar days or more, notifies the department at least one (1) week in advance of return to work.
Payroll	10. If the employee did not submit copies of military orders prior to the military leave due to immediate activation, the employee will receive a request from Payroll to do so upon their return to work. If copies of military orders are not received by the stated deadline, the military leave time will be adjusted using the employee's available leave including vacation, personal or compensable time.
Department	11. If over thirty (30) calendar days, advises Human Resources of employee's return date or return to job.
Human Resources	12. Inputs return from leave in the Human Resources and Payroll System.

Approved:

/s/ Mark Danaj — 02/16/07
Director of Finance — Date

Approved:

/s/ Kay Winer — 02/16/07
Chief Deputy City Manager — Date

C

AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND

_____

This Agreement is entered into this _____ day of_____, 2____, by the City of San Jose ("City"), a municipal corporation, and _____ ("Employee"), an individual.

RECITALS

The purpose of this Agreement is to provide for supplemental compensation pursuant to City of San Jose Resolution No. 73180 attached as Exhibit A, which approved benefits for City of San Jose employees, who are called to active military duty related to terrorist attacks or impending or actual armed conflict and encourage such employees to return to City service after release from such active military service.

THE PARTIES AGREE AS FOLLOWS:

SECTION 1.

City agrees to provide Employee, serving on active military duty, beyond the thirty (30) calendar days of Military Leave, related to terrorist attacks or impending or actual armed conflict in accordance with Resolution No 73180, with supplemental salary, the employer contribution toward health, and dental insurance, and the Employee's retirement contributions for during the period from January 1, 2003 to December 31, 2007. If Employee receives both City supplemental pay and active military duty salary

in excess of Employee's regular City salary, Employee agrees to pay City that amount of salary received in excess of Employee's regular City salary within thirty (30) days after returning to City employment, or retirement, whichever is sooner. If Employee is serving a probationary period (initial or promotional) when called to active duty, Employee will complete their probationary period upon their return to City service. Military duty will not count toward Employee's probationary period (initial or promotional).

SECTION 2.

In accordance with City Policy Manual Section 4.2.2, Military Leave, an employee who is also a military reservist and called to active duty is entitled to thirty (30) days of paid military leave per fiscal year. In the event that the employee is called to active duty for more than thirty days per fiscal year, in accordance with Resolution 73180, the City will provide the employee with supplemental pay and benefits. An employee that is called to active duty for more than thirty (30) days per fiscal year is required to submit a copy of their orders and their most recent military pay stub to Payroll within ninety (90) days of their departure for active duty. The City will use the employee's military pay stub to calculate the difference between their military pay and their City pay, and will pay the employee the difference. If the City does not receive a copy of the employee's orders and military pay stub within ninety (90) days of departure for actvie duty, the City will estimate and provide supplemental pay to the employee for the initial ninety (90) days. Any additional payment of supplemental pay will not be issued until a copy of the employee's military pay stub is received. Thereafter, the Employee is also required to submit a copy of their monthly military pay stub to Payroll each month within fifteen (15) business days of issuance for the duration of their military tour. If Payroll does not receive a copy of any subsequent monthly military pay stub for a period longer than

sixty (60) business days, the City will cease all future payments of supplemental pay until the City receives all previously issued monthly military pay stub(s) that were not previously submitted.

SECTION 3.

Employee agrees to return to City employment within the time required by law after the end of active military duty status if not incapacitated due to being wounded or injured in action and agrees to remain an active City employee for at least six (6) months following Employee's return to City employment, or retires from City service.

SECTION 4.

Employee agrees that in the event Employee does not comply with the provisions of Section 3, above as determined by the City, Employee shall remit to City within ninety (90) days after the end of active military duty status or within thirty (30) days of Employee's separation or retirement from City service, whichever is applicable, an amount equal to all supplemental salary, and all health, and dental insurance premiums, paid by City or received by Employee pursuant to this Agreement and Resolution No. 73180.

SECTION 5

Due to the variance of military pay while on active duty, employee understands that there will be some amount of under or over payment of supplemental pay. Within thirty (30) days of the end of the employee's active duty assignment, the employee shall submit to the Finance Department a copy of their most recent military pay stub and any additional documentation needed for reconciliation. The Finance Department will review all payments of supplemental pay made to the employee to determine over or under

payment for purposes of reconciliation. Repayment by the employee for any over payment, or arrangements for repayment, shall be made within thirty (30) days of the employee's receipt of a reconcillation report from Finance.

SECTION 6.

This Agreement embodies the entire understanding of the parties. There are no other agreements between the parties relating to the payment of supplemental compensation or benefits to Employee pursuant to Resolution No. 73180.

This Agreement was executed by the parties on the day and year written above.

City of San Jose, a municipal corporation

By_____
Name: Kay Winer
Title: Chief Deputy City Manager

Employee Signature:

_____

_____

D

City of San Jose
Employee/Military Reservist Information
For Internal Use Only

Employee Name: _____

Address for Correspondence: _____

_____

Email: _____

Phone: _____

Military Branch: _____

Dates of Active Duty: _____

Title 10 Orders: Yes____ No____ Rank in Military: _____

Years of Military Service: _____ Dependents: Yes____ No____

Permanent Zip Code: _____ Duty Location Zip Code if known: _____

Designated family member contact (Name/Phone/Relationship):

_____

- ☐ Employee signed Military Leave Agreement Waived: _____
- ☐ If yes, Supplemental Salary calculation explained to employee (Finance)
- ☐ If yes, Employee provided Leave Earning Statement
- ☐ Employee provided information packet including:
  - Military Leave Policy
  - Copy of Resolution
  - Benefits Overview
  - Benefits Continuation Form
  - City Contact Information
- ☐ Benefits Continuation
  - ☐ Accepted
  - ☐ Declined

- ☐ Leave information submitted to payroll: _____
  Date
- ☐ Entered into PeopleSoft: _____
  Date
- ☐ First 30 days paid: Yes _____ No _____
- ☐ 35 Day Review – Pay Status
- ☐ 60 day review – military pay stubs received if elected supplemental
- ☐ Additional follow up needed:

MILITARY LEAVE PROGRAM FOR CITY EMPLOYEES

Summary of December 2006 Council Direction

- **Provide a copy of the completed orientation packet.**
- **Make estimates as precise as possible.**
- **Verify past Council actions on included and excluded pays.**

Changes to Implementation of Program

- **Orientation Process**
- **Improvements to process before, during and following completion of tour of duty.**

Status of Reconciliations as of March 30, 2007

- # of reservists
- # of tours
- # of completed reconciliations
- Process for reconciliations that are incomplete

Other Related Items

- **Veterans Preference**
- **Coordination with Department of Defense**
- **Employee Feedback on Program**