



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Alex Gurza  
Scott P. Johnson

**SUBJECT:** Extension of the Military Benefits  
Eligibility for City Employees Called  
To Active Military Duty

**DATE:** May 8, 2006

Approved

Date

5/10/06

**COUNCIL DISTRICT:** City-Wide

## RECOMMENDATION

1. Adoption of a resolution extending the enhanced military leave program to City employees who are called to active military duty during the period from January 1, 2003 to December 31, 2007, for reasons related to terrorist attacks or impending or actual armed conflict. (These eligible employees will receive supplemental pay and benefits for the entire time of active duty pursuant to Council action on December 16, 2003.)
2. That, as part of the resolution, the City Council continue to delegate authority to the City Manager or designee to sign agreements with the eligible employees detailing the requirements for those employees who apply to receive the supplementary benefits as outlined in the resolution.
3. Acceptance of Staff's report regarding questions related to the Military Leave Program.

## OUTCOME

If the above recommendations are approved, City employees called to active military duty during the period from January 1, 2003 to December 31, 2007, for reasons related to terrorist attacks or impending or actual armed conflict will receive supplemental pay and benefits for the entire time of active duty.

## BACKGROUND

Eligible City employees who are military reservists receive their full salary and benefits continuation for thirty (30) calendar days per fiscal year when engaged in specific military duty, including active military training, encampment, naval cruises, special exercises, or like activity.

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## **BACKGROUND (cont'd.)**

In situations of significant military action, such as the war on terror following September 11, 2001, the City Council has enhanced the benefits for reservists who are called to active duty beyond thirty (30) calendar days. Specifically, the City has paid the difference between the employee's military pay and the pay they would have received as a City employee (military supplemental pay). If the military pay (including base pay and allowances which constitute additional compensation) is more than the City would have paid the employee, then the employee is not eligible to receive the military supplemental pay. In addition to the salary supplement, the City continues the employee's health and dental benefits, and continues the employee's vacation and sick leave accruals. Upon the employee's return to City service, the City pays the retirement contributions owed by both the City and the employee.

On April 19, 2005, Staff provided a report to Council on the City's Military Leave Program which included a cost analysis of the supplemental pay calculation method that was approved by Council on March 22, 2005, compared to a base salary-to-base salary calculation method. Staff's report recommended that the supplemental method approved by Council on March 22, 2005 remain in effect. The City Council approved this recommendation with direction to staff to report back in one (1) year on how supervisors are supporting the use of flex shifts and flex hours and to review the possibility of establishing the Military Leave Program under ordinance verses a resolution to demonstrate the City's support of this program and the benefits it provides City employees called to active duty.

## **ANALYSIS**

The City Council has extended supplemental compensation and benefits for employees who become eligible during the period from January 1, 2003 to December 31, 2005, to include the entire time employees are called to active duty as a result of terrorist attacks or impending or actual armed conflict, whether the recall is partial or full mobilization, Presidential Recall, Additional Duty for Special Work, Annual Duty or Additional Duty. The most recent instances are as follows:

1. October 2, 2001: After the September 11, 2001, terrorist attacks on the United States, the Council adopted a Resolution extending salary and benefits to reservists who are called to active duty between September 11, 2001 and December 31, 2002. During that time, approximately twenty-four (24) City employees were called for duty and were eligible for the enhanced benefits. The end date for that Resolution was December 31, 2002.
2. March 18, 2003: As a result of reservists and National Guards being called to active duty related to terrorist attacks or impending or actual armed conflict, the Council adopted a Resolution extending the military supplemental pay and benefits for those employees who became eligible during the period from January 1, 2003 to December 31, 2004, for a maximum of twenty-six (26) full pay periods, in addition to continued accrual of vacation and sick leave. During this time, approximately thirty-two (32) City employees were

ANALYSIS (cont'd.)

called for duty and eligible for the enhanced Benefits. The end date for that Resolution was December 31, 2004.

3. December 16, 2003: The Council adopted a Resolution extending the military supplemental pay and benefits for the entire time of active duty including such active duty that may extend beyond twenty-six (26) pay periods for employees who became eligible during the period from January 1, 2003 to December 31, 2004.
4. December 14, 2004: The Council adopted a Resolution extending the military supplemental pay and benefits for the entire time of active duty including such active duty that may extend beyond twenty-six (26) pay periods for employees who became eligible during the period from January 1, 2003 to December 31, 2005.

The Resolutions granting additional benefits covered employees who:

1. Were members of the reserves and/or National Guard; and
2. Were called to active duty as a result of the specific military action; and
3. Returned to City employment within sixty (60) days after the end of active duty status; and
4. Remained as active employees for at least six (6) months following their return to City employment.

As part of the Resolutions authorizing additional benefits, the City Manager or his designee was delegated the authority to sign agreements detailing the requirements for those employees who applied to receive the supplemental benefits. The employees were required to sign the agreement that detailed their rights and obligations pursuant to these supplemental benefits prior to initial receipt of benefits beyond the mandatory provision of thirty (30) days full pay and benefits while on military leave. Employees were notified that should they elect not to return to City service, they would be required to repay the City for the costs of the supplemental salary and benefits plus interest (at the rate earned on the City's pooled investments) for the periods that exceeded the thirty (30) days of military leave. The return to work requirement is consistent with the San Jose Municipal Code sections regarding retirement contributions.

**Extending the Eligibility for the Enhanced Military Leave Program through December 2007**

The resolution granting employees the enhanced military leave program expired in December of 2005, however several City employees remain on active duty in relation to terrorist attacks and it is anticipated that employees will continue to be called. For that reason it is recommended that the eligibility for the Enhanced Military Leave Program be extended from January 1, 2003 through December 31, 2007.

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### **ANALYSIS (cont'd.)**

If the City Council accepts the recommendation of continuing to provide supplemental pay for the entire time of active duty, those employees that become eligible through the period ending

December 31, 2007, will be eligible for military supplemental pay under the same parameters approved by the Council in 2003.

Eligible employees will continue to receive pay from the City in an amount equal to their City salary less military pay in accordance with previous Council direction.

### **Use of flex shifts and flex hours**

Supervisors in all departments are encouraged to support the use of flex shifts and flex hours whenever possible in an effort to aid members of the Reserves and National Guard in balancing their jobs and military training when not on active duty. The use of flex shifts or flex hours must be handled as a case by case basis as supervisors must consider workload and staffing issues when determining if flex shifts or flex time can be utilized in a particular instance. This is especially important in those operations which have minimum staffing requirements such as the Police and Fire departments.

Communication was sent to departments which explained the intent of flex shifts and flex hours and encouraged departments and supervisors to allow flex shifts and flex hours when possible in consideration of operational and staffing needs.

Staff is not aware of any employee concerns within the last year pertaining to the denial of the use of flex shifts or flex hours related to military training.

### **Review of Establishing the Military Leave Program under Ordinance verses Resolution**

Staff reviewed the possibility of establishing the Military Leave Program under ordinance verses a resolution. Staff noted that since the original resolution passed on October 2, 2001, several changes have been made to the Military Leave Program's guidelines and benefits. For example, the resolution passed on March 18, 2003, granted leave for a maximum of twenty-six (26) pay periods, however the resolution passed on December 18, 2003, and resolutions since grant that reservists are covered for the entire amount of time they are called to active duty.

One of the advantages of approving and implementing changes to the Military Leave Program by resolution is that resolutions can be easily updated and amended to incorporate necessary changes immediately upon adoption by the City Council. On the other hand, program changes by ordinance require a more formal process including a thirty (30) day period before the changes or improvements are effective. Given the nature of the Military Leave Program and the history of changes that have been made to the Program, it is recommended that the Military Leave Program be continued to be approved and amended by City Council resolution.

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### ALTERNATIVES

The City is not required to continue providing enhanced military leave benefits. As an alternative to extending the military benefits eligibility for City employees called to active military duty, the City Council could provide only the military benefits provided by law and City policy. This alternative would provide up to thirty (30) days of pay continuation and benefits.

### PUBLIC OUTREACH

Not applicable.

### COORDINATION

This memorandum was coordinated with the City Manager's Budget Office, the City Attorney's Office and the Department of Employee Services.

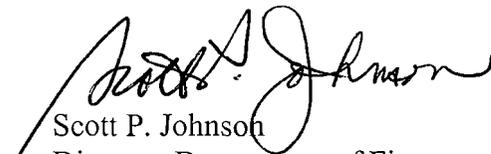
### COST IMPLICATIONS

The adopted budget already provides full salary and benefits for these employees. Therefore, no additional appropriations will be required to fund the recommendation since these personnel costs are currently budgeted. However, direct costs result from lost productivity and any overtime or backfilling required to fill the positions of employees called to active duty.

If Council adopts the recommendation, as a part of the Resolution the City Manager or his designee would be delegated the authority to sign agreements detailing requirements similar to the prior Resolutions for those employees who apply to receive the supplementary pay and/or benefits for the entire time they are on active duty.



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