



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Scott P. Johnson
Alex Gurza

SUBJECT: MILITARY LEAVE PROGRAMS
FOR CITY EMPLOYEES

DATE: October 26, 2006

Approved

Ray Wilson

Date

10/26/06

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

- (a) Approval to continue to provide supplemental pay and benefits, pursuant to Resolution No. 73180, to employees who are military reservists and who are called to active duty.
- (b) Direction to staff to continue to work to resolve the pending issues involving the military reconciliation process and implement procedures to help minimize these issues in the future.

OUTCOME

As discussed at the October 18, 2006 Rules Committee Meeting regarding the revised Military Leave Policy, the improved informational packet for reservists, as well as the development of written procedures for the reconciliation process, will help to resolve many of the current issues involving the military leave reconciliation process.

BACKGROUND

Various issues, such as the reconciliation process for supplemental pay, were discussed at the October 18, 2006, Rules Committee meeting. During the meeting, City staff informed the Committee that both the City Manager's Office and the Finance Department are working on responding to and resolving the ongoing issues regarding supplemental pay for military reservists on active duty and who are also City employees.

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. This is a continuing policy that is contained in City Policy Manual Section 4.2.2.

In situations of significant military action, such as the war on terror following September 11, 2001, the City Council from time to time has enhanced the benefits for reservists who were called to active duty beyond the thirty (30) calendar days referenced above. 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.

A resolution was adopted on May 8, 2006 extending the enhanced military leave program to eligible 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. Employees who are also reservists are required to sign an agreement prior to leaving for active duty assignments beyond thirty (30) days per fiscal year. By signing this agreement, the employee acknowledges that there may be over payments due to variations in military pay and that they will be required to repay the City for any such over payments.

The following table is an example of how supplemental pay is calculated:

	City Compensation (Monthly)	Military Compensation (Monthly)
Basic Monthly Rate	\$6,172.80	\$3,245.90
Special Pay	\$1,100.00	\$360.00
Total Monthly Pay	\$7,272.80	\$3,605.90
Difference in Pay	\$3,666.90 (\$7,272.80 - \$3,605.90)	
Amount of Supplemental Pay	<u>\$3,666.90</u>	

ANALYSIS

Reconciliation Issues

The Supplemental Military Leave Program for employees who receive supplemental compensation for active duty assignments longer than thirty (30) days requires reconciliation between the pay the employee would have earned in their City employment and the pay the employee received from the

military. The Program provides that the Finance Department closely estimate the employee's military pay pending receipt of verification from the employee. Due to the frequent variations of military pay that a military reservist receives while on duty, an overpayment in supplemental pay may result. Unfortunately, there have been instances in which the amount of the overpayment to the employee has been significant. Whenever there is an overpayment in supplemental pay, the Finance Department works with the employee on a repayment schedule. The employee is not expected to repay the amount in a lump sum.

The City Manager's Office has been working with the Finance Department to address the overpayment issues. In 2005, a new methodology was adopted for the reconciliation process to help minimize the issues resulting in the overpayment of supplemental compensation. The Finance Department has continued to make every effort to minimize the number of overpayments, however many of the current reconciliation issues involve payments that were made prior to the new adopted methodology.

As an additional effort to help minimize the overpayment issues in the future, we are in the process of updating and improving the informational packet that is provided to City employees who are also reservists prior to their departure for active duty assignments longer than thirty (30) days. The revised information packet outlines specific documentation that the City needs to receive from the City employee in order to properly calculate the amount of supplemental pay. The updates and improvements to the informational packet are expected to be completed by October 31, 2006.

Since January of 2003, 58 reservists have served on a total of 316 military tours of duty. As of the most recent pay period ending October 21st, there were 15 reservist who were out on active duty. Since supplemental military leave is paid based on projections of both City and military compensation, Finance staff must reconcile employees' actual compensation and retirement benefits in accordance with the approved Council resolutions concerning supplemental military leave.

It is important to understand that each reservist may have multiple military tours and each tour may have multiple components, resulting in many separate reconciliation tasks per reservist. Therefore, each of the 316 tours currently in the database requires reconciliation, regardless of the length of the tour. Temporary staff resources are being deployed in Finance to assist in working on the backlog. An assessment will also be done to determine the resources necessary to maintain and update the reconciliations. Finance will make every effort to complete each outstanding reconciliation within thirty (30) days of receipt of all necessary documents for each reservist's tour that has ended. In addition, Finance will also be proactive in working with reservists to ensure that all information necessary to verify actual military pay is received in a timely fashion.

Finance has prepared a general distribution memo to reservists reinforcing their responsibility to provide supporting documentation, reiterating what items are required and the related time lines to provide the documentation to Finance. Finance is also developing written internal procedures for reconciling supplemental pay. This will ensure all future reconciliations are completed promptly, consistently, and accurately.

Retirement Contributions

The Finance Department and Retirement Services will continue to work together to ensure that employee/employer contributions are made upon an employee's return to City Service and that the appropriate amount of service credit is applied. Finance staff will meet with Retirement Service staff to investigate alternatives for automating the current manual process for posting the military service credits, similar to that for regular employee retirement service hours.

Eligibility for Supplemental Pay

In accordance with resolution 73180, an employee who is also a military reservist, and who has been a City employee for at least one (1) year, and who is called to active duty for longer than thirty (30) days per fiscal year related to terrorist attacks or actual or impending armed conflict, is also eligible to receive supplemental pay and benefits through December 31, 2007.

Military Leave Liaison

The City Manager's Office of Employee Relations is the City's Military Leave Liaison and is available to assist City employees who are also called to active duty with any questions or issues they may have regarding military leave and/or supplemental pay and benefits.

The Office of Employee Relations is currently working to revise the City's Military Leave Policy to include a section explaining that from time to time, the City Council approves resolutions that provide for additional paid leave and benefits to City employees who are also military reservists called to active duty beyond thirty (30) days. The draft revisions to the City's Military Leave Policy have been sent to the bargaining units for review. The revised policy should be finalized and posted to the City Policy Manual in November 2006.

In an effort to help minimize the overpayment issues in the future, we are in the process of updating and improving the informational packet that is provided to City employees who are also reservists prior to their departure for active duty assignments longer than thirty (30) days. The revised information packet outlines specific documentation that the City needs to receive from the employee in order to properly calculate the amount of supplemental pay. The updates and improvements to the informational packet are expected to be completed by October 31, 2006.

The Office of Employee Relations has also worked to inform employees of their rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA) by posting the appropriate USERRA notice in the same locations that other required workplace notices are posted. The Office of Employee Relations maintains an intranet page that contains links to all of the required workplace notices, including the USERRA notice. An email to all City employees was sent on October 10, 2006, with a link to this intranet page as an additional effort to remind employees of the various required workplace notices.

Veterans' Preference

In accordance with State law (Government Code Section 50088), when any city, county, or city and county, general law or chartered, has an established civil service system and entrance examination for hiring, the City Council is required to either implement a veterans' preference system giving preference to a veteran over other identically qualified applicants or adopt a resolution identifying reasons that it does not implement a veterans' preference system.

The Department of Human Resources is in the process of reviewing the issues surrounding a veterans' preference system. If it is recommended that the City implement a veterans' preference system, it will be subject to review by the bargaining units. The Administration's recommendation will be brought before the City Council within 90 days.

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)**

Public Outreach does not apply to this item; however, this item will be placed on the October 31, 2006 Council Agenda.

COORDINATION

The City Manager's Office, the Finance Department, and the Department of Retirement Services have been working together to ensure that Military Leave and supplemental pay and benefits are administered appropriately. We are also working together to thoroughly and promptly resolve the pending reconciliation issues and to minimize such occurrences in the future. This memorandum was also coordinated with the City Attorney's Office.

HONORABLE MAYOR AND CITY COUNCIL

October 26, 2006

Subject: Military Leave Programs for City Employees

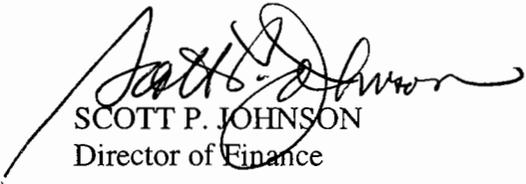
Page 6

COST SUMMARY/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.

CEQA

Not a project.



SCOTT P. JOHNSON
Director of Finance



ALEX GURZA
Director of Employee Relations

For questions please contact Alex Gurza, Director of Employee Relations at 535-8150.



Memorandum

TO: Rules Committee

FROM: Vice-Mayor Cindy Chavez
and Councilmember Campos

SUBJECT: Military Reserve Issues

DATE: October 17, 2006

APPROVED:

DATE: 10/17/06

RECOMMENDATION

We request the following item be added to the October 24, 2006 City Council Agenda:
Discussion and/or action related to the City's Military Leave Programs for City Employees.

BACKGROUND

Returning reservists have had long-term issues that have not been resolved over the past several months. Of further concern, several soldiers currently deployed are due to come back in the coming months and could face similar circumstances. Council direction is needed to reconcile the following issues:

- **Payment and Repayment reconciliation.** Recently, after being home for 13 months, a reservist was billed with approximately \$52,000 in overpayments over the course of 34 months he was in Iraq. This is not the only case, but we think this is the largest amount so far. At what point does the City assume some responsibility for long-term payment errors?
- **Payroll issues:** We need a written policy from Payroll regarding how they're going to process supplemental pay.
- **Reconciliation for Retirement Contributions and Retirement Service Credit between Payroll and Retirement Services:** Payroll and Retirement Services are not in sync, and the departments operate on different computer systems. One reservist has waited for 4 years for this reconciliation, and he is near or at retirement age, so this is preventing him from preparing to retire.
- **Deployment eligibility for supplemental pay:** Currently, the City supplements pay for reservists who are called to duty for Operation Enduring Freedom or Operation Iraqi Freedom.
- Establish a Military Liaison within the City Manager's Office.

CC: Mayor and City Council



Distributed on:

SENT TO COUNCIL: OCT 16 2006

by City Manager's Office

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Alex Gurza

SUBJECT: Military Leave Programs
for City Employees

DATE: October 16, 2006

Approved

Ray Winer

Date

10/16/06

INFORMATION

BACKGROUND

The purpose of this Memorandum is to provide the Mayor and the City Council with an update on programs and policies related to City employees who serve in the military reserves. It was also noted that Military Leave is an agenda item for the October 18, 2006 Rules Committee meeting and therefore, this memorandum is also intended to inform the Mayor and City Council that both the City Manager's Office and the Finance Department are in the process of responding to and resolving the ongoing issues regarding Military Leave.

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. This is a continuing policy that is contained in City Policy Manual Section 4.2.2.

In situations of significant military action, such as the war on terror following September 11, 2001, the City Council from time to time has enhanced the benefits for reservists who were called to active duty beyond the thirty (30) calendar days referenced above. 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.

A new resolution was adopted on May 8, 2006 extending the enhanced military leave program to eligible 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.

RECONCILIATION ISSUES

The Supplemental Military Leave Program for employees who receive supplemental compensation for active duty assignments longer than thirty days requires reconciliation between the pay the employee would have earned in their City employment and the pay the employee received from the military. The Program provides that the Finance Department estimate the employee's military pay pending receipt of verification from the employee. The reconciliation process will result in either the employee having been over or under paid during the time of active military duty. Unfortunately, there have been instances in which the amount of the overpayment to the employee has been significant. In these cases, the Finance Department works with the employee on a repayment schedule. The employee is not required to make the repayment at all once.

The City Manager's Office has been working with the Finance Department to address the overpayment issues. In 2005, a new methodology was adopted for the reconciliation process to help resolve the issues resulting in the overpayment of supplemental compensation. The Finance Department has continued to make every effort to minimize the number of overpayments, however many of the current reconciliation issues involve payments that were made prior to the new adopted methodology.

As an additional effort to help minimize the overpayment issues in the future, we are in the process of updating and improving the informational packet that is provided to City employees who are also reservists prior to their departure for active duty assignments longer than thirty days. The revised information packet outlines specific documentation that the City needs to receive from the City employee in order to properly calculate the amount of supplemental pay. The updates and improvements to the informational packet are expected to be completed by October 31, 2006.

MILITARY LEAVE POLICY

The City's current Military Leave Policy (City Policy Manual Section 4.2.2) states that an employee who is also a reservist, and who has been employed by the City for at least one year, is entitled to thirty (30) days of military leave per fiscal year. This policy is in the process of being revised to include a section explaining that from time to time, the City Council approves resolutions that provide for additional paid leave and benefits to City employees who are also military reservists called to active duty beyond thirty (30) days. The draft revisions to the City's Military Leave Policy have been sent to the bargaining units for review. The revised policy should be finalized and posted to the City Policy Manual in November 2006.

USERRA WORKPLACE POSTING

In 2006, employers were required by federal law to inform employees of their rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA) by posting the appropriate USERRA notice in the same locations that other required workplace notices are posted. The City complied with this requirement by ensuring that the USERRA notice is posted in appropriate locations, along with other required notices. In addition, the City Manager's Office of Employee Relations maintains an intranet page that contains links to all of the required workplace notices, including the USERRA notice. An email to all City employees was sent on October 10, 2006, with a link to this intranet page as an additional effort to remind employees of the various required workplace notices.

MILITARY LEAVE LIAISON

It has been suggested that the City establish a Military Leave Liaison within the City Manager's Office to assist City employees who are also reservists with any issues or questions that they may have regarding Military Leave. The City Manager's Office of Employee Relations has taken on this responsibility and is currently functioning as the City's Military Leave Liaison.

The City's Military Leave Policy has also been revised to inform employees that the City Manager's Office of Employee Relations is the City's Military Leave Liaison and is available to help resolve any issues or answer any questions employees may have regarding Military Leave.

VETERANS' PREFERENCE

In accordance with State law (Government Code Section 50088), when any city, county, or city and county, general law or chartered, has an established civil service system and entrance examination for hiring, the City Council is required to either implement a veterans' preference system giving preference to a veteran over other identically qualified applicants or adopt a resolution identifying reasons that it does not implement a veterans' preference system.

The Department of Human Resources is in the process of reviewing the issues surrounding a veterans' preference system. If it is recommended that the City implement a veterans' preference system, it will be subject to review by the bargaining units. The Administration's recommendation will be brought before the City Council within 90 days.

CONCLUSION

Several employees have raised concerns regarding the City's currently Military Leave Program and have made suggestions to help improve the program. The City has taken the concerns and suggestions of these City employees into consideration and is in the process of making improvements to the current program. Most importantly, the Finance Department will be implementing changes to minimize to the extent possible the amount of the over payments and under payments.



Alex Gurza
Director of Employee Relations

For questions please contact Alex Gurza, Director of Employee Relations at 535-8150.





Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: RICHARD DOYLE
City Attorney

SUBJECT: Recovery of Overpayment of
Employee Pay – Legal Issues

DATE: October 26, 2006

BACKGROUND

On October 18, 2006, at the request of Vice Mayor Chavez and Councilmember Campos, the Rules Committee referred the discussion of issues related to the City's Military Leave Program to the October 31, 2006 City Council Agenda. One of the issues concerned an overpayment of salary to a military reservist over a period of 34 months. The City Attorney was requested to address whether the City can assume responsibility for long-term payment errors and overpayments of wages or salary to employees covered by the Program.

ANALYSIS

The City is required to seek payments of overpaid salary or wages to City employees. The fact that the City is responsible for errors, even over an extended period of time, does not diminish the obligation to seek repayment of extra unearned compensation.

Article XI, Section 10(a) of the California Constitution provides as follows:

A local government body may not grant extra compensation or extra allowance to a public officer, public employee, or contractor after service has been rendered or a contract has been entered into and performed in whole or in part, or pay a claim under an agreement made without authority of law.

By not requiring repayment of unearned compensation by an employee, a public employer is, in effect, granting additional compensation after services have been rendered by the employee and would be making a gift of public funds. For example, where a specified salary or wage is fixed for a public employee, retroactive application of a salary increase to address a misunderstanding cannot be implemented by a legislative body under Article XI, Section 10(a) of the California Constitution. 65 Ops.Cal.Atty.Gen 66 (1982).

October 26, 2006

Subject: Overpayment of Salary

Page 2

Further, in reviewing an overpayment of wages to a state National Guard officer who was employed by the United States Armed Forces, the California Attorney General concluded that a waiver of collection cannot be done without the express authority to refrain from recovery of salary overpayments. 64 Ops.Cal.Atty.Gen.750 (1981).

There may be limited circumstances where collection of a claim based on a salary or wage overpayment may be waived. The Director of Finance is authorized to write off as uncollectible any account or claim not exceeding five thousand dollars which the City may have against any person when the Director determines that the claim is (1) uncollectible (2) possibly collectible but collection is not cost effective or (3) the claim is not a valid, enforceable claim of the City. (SJMC 4.24.030).

CONCLUSION

The City is required to seek payments of overpaid salary or wages to City employees. The fact that the City is responsible for errors, even over an extended period of time, does not diminish the City's obligation to seek repayment of overpayments of salary or extra unearned compensation. There is no requirement that an employee is required to make a repayment at once and the City may provide an employee with a repayment schedule.

RICHARD DOYLE
City Attorney

By _____
Norman Sato
Chief Deputy City Attorney

cc: Les White
Alex Gurza

For questions please contact Norm Sato, Chief Deputy City Attorney at (409) 535-1900

RECEIVED
San Jose City Clerk

2006 OCT 27 AM 9:53



Memorandum

TO: City Council

FROM: Mayor Ron Gonzales

SUBJECT: Military Leave Program for
City Employees

DATE: October 26, 2006

Approved *Ron Gonzales* Date *10/26/06*

INFORMATIONAL

As we discuss the memorandum brought forward by Vice Mayor Chavez and Councilmember Campos regarding our military leave and benefits program for City employees, I want to remind the City Council and City staff of our previous direction on this matter.

The military leave and benefits program provides stability to City employees in the National Guard and military reserves, whether they are serving our community or our country, and it is a small price to pay in recognition of the difficult challenges city employees face when they leave their families and their homes. I am confident we will continue to address their concerns and further develop our city program to support employees called to active duty.

Over the past five years, the City Council and I have worked together to improve and update the military benefits program to eliminate red tape, provide a greater level of support for our employees of city employees called to active duty and for their families, and keep our employees whole while they serve the nation.

We also have addressed concerns raised by employees returning from active duty that are specifically relevant to the memorandum submitted by Vice Mayor Chavez and Councilmember Campos. On December 14, 2004, Council approved direction to staff to:

- Review the payroll policy that automatically provides 25% of an eligible employee's salary to be paid if the pay stub had not yet been submitted, and develop alternatives to better represent the correct amount owed to the employee.
- Apply the extension of the benefits to all members of the Reserves or National Guard who are called to active duty for more than 30 days for any reason.

The attachments listed below also refer to the revisions made since 2001 to simplify our process in order to ensure that employees on active duty can continue to receive the portion of their City salaries needed to complement their compensation for military service.

Last year, San José was commended by the U.S. Department of Defense, through its Employer Support Program for the National Guard and Reserves, for our effective efforts to support City employees called to active duty. We were cited as a model employer for our commitment to the men and women serving our nation, and San Jose is among a select group of private companies and public agencies working together to address the needs of employees called to active duty. We should be proud of all we have done so far to support our city employees.

Attachments:

1. Memorandum from Mayor Gonzales and Councilmember Reed, approved by Council on April 19, 2005
2. Memorandum from Mayor Gonzales and Councilmember Reed, approved by Council on December 14, 2004
3. Staff Report for the May 23, 2006, Council Agenda
4. Staff report for the April 19, 2005, Council Agenda
5. Staff Report for the March 22, 2005, Council Agenda
6. Staff Report for the December 14, 2004, Council Agenda



Memorandum

TO: City Council

FROM: Mayor Ron Gonzales,
Councilmember Chuck Reed

SUBJECT: Benefits for City Employee
Reservists called to Active Duty

DATE: April 18, 2005

Approved:

RG

Date:

4/18/05

Chuck Reed

RECOMMENDATION

We recommend the following:

1. Accept staff's report on Military Supplemental Salary calculation analysis.
2. Continue the City Council's current policy under the Military Leave Program that provides supplemental income to employees called up to active military duty to "keep them whole" so that their total income while on active duty is equivalent to their normal City pay.
3. Support the use of flex shifts and flex hours to ensure that members of the Reserves and National Guard who have not been called to active duty have a supportive work environment to balance their jobs and the demands of military training when not on active duty. We recommend that the Administration report to the Council in a year on how supervisors are supporting flex-time as an option for employee/reservists.
4. Review the possibility of establishing the Military Leave Program under ordinance versus a resolution to demonstrate the City's support of this program and the benefits it provides city employees called to active duty.

BACKGROUND

City employees in the National Guard and military reserves are critical contributors for nation's security both home and abroad, and we are proud of their service to America. The City Council has approved supplemental pay and benefits for these employees so that they are not penalized for their service to the nation.

We recommend that we continue this policy so that their total pay while on active duty is equivalent to their regular City compensation. In determining supplemental pay, the City should take into account direction from the Mayor and Council to keep our employees whole while they are on active duty.

Our additional recommendations respond to the needs of our employees in the reserves or National Guard who are not on active duty but must balance their obligations to the City and to the reserves. The City should provide a work environment that is flexible and supportive to help our employees meet their military training commitments.

Our recommendations aim to keep our employees whole while on active duty and to support their service commitments at home when they are not on active duty. The extension of salary and benefits is a small price for the sacrifices of our employees and their families as they serve our country.



Memorandum

TO: City Council

FROM: Mayor Ron Gonzales,
Councilmember Chuck Reed

SUBJECT: Extension of Benefits for City
Employees called to Military Duty

DATE: December 13, 2004

Approved:

Ron Gonzales *Chuck Reed*

Date:

12/13/04

RECOMMENDATION

Approve the staff recommendations with the following additional direction to the City Manager:

1. Exclude compensation received as an allowance or reimbursement for expenses incurred while on active duty from the calculation of military salary for purposes of determining the amount of supplemental pay.
2. Meet with impacted employees who have returned from active duty and with payroll/finance representatives of military forces to better understand how the City interprets pay stubs received from the military.
3. Develop additional changes to the City's supplemental pay policy, based on the above meetings, to simplify paperwork requirements for city staff and reservists alike.
4. Review the current payroll policy that automatically provides 25% of the employee's salary to be paid if the eligible employee's pay stub has not been submitted yet and develop alternatives to better represent the correct amount owed to the employee, with the goal of avoiding paybacks by reservists while still providing bridge pay during transitions.
5. Work with the City's bargaining units to develop a system that will allow members of the Reserves and National Guard who have not been called to active duty to use flex shifts and flex hours so they can better balance their jobs and the demands of military training when not on active duty.
6. Report back to the City Council with a review of the recommendations above including an analysis of potential savings or costs associated with these recommendations.

7. Apply the Resolution to all members of the Reserves or National Guard who are called to active duty for more than 30 days for any reason prior to the expiration of the Resolution.

BACKGROUND

We should make it possible for our employees to serve our nation, especially during time of war, with minimal red tape and disruption to their families. City employees in the National Guard and military reserves are critical contributors for nation's security both home and abroad, and we are proud of their service to America. Over the past three years many of our employees have been called up to serve active duty, including overseas assignments in dangerous war zones for extended periods of time. For this reason the City Council has approved supplemental pay and benefits for these employees so that they are not penalized for their service.

In determining supplemental pay, the City should take into account the Mayor and Council direction to keep our employees whole while they are on active duty. The War on Terrorism is not confined to any one country and some of our employees may be called up to serve in many different ways and for extended periods of time on multiple occasions. When these employees are called away from their families and their regular jobs with the City, they also may incur expenses for housing, food and travel. When they receive an allowance or reimbursement from the military for those added expenses, there are some payments that should not be viewed as additional salary.

For example, they may be living in overseas military-approved living quarters, but they also still need to pay the mortgage or rent for their family at home. A person on active duty may also receive a military living allowance to assist their families back home, which the city should include in its pay calculation.

In addition, we should be flexible with employees' work schedules to support their military commitments. Employees in the reserves or National Guard but not on active duty may be facing increased time requirements to help support units that have been deployed. The City should develop a system to support these employees so they can continue their commitments to their country during these challenging times.

Our recommendations aim to keep our employees whole while on active duty. The extension of salary and benefits is a small price for the sacrifices of our employees and their families as they serve our country.



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.

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 versus 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.

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.

HONORABLE MAYOR AND CITY COUNCIL

May 8, 2006

Subject: Extension of the Military Benefits Eligibility for City Employees Called to Active Military Duty

Page 5 of 5

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.

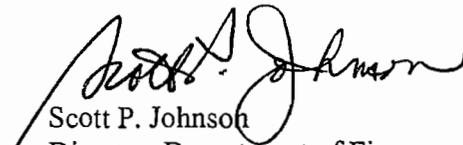
COST IMPLICATIONS

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.



Alex Gurza
Director, Office of Employee Relations



Scott P. Johnson
Director, Department of Finance

For questions please contact Alex Gurza, Director of Employee Relations, at 408-535-8155.



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Alex Gurza
Scott P. Johnson

SUBJECT: Staff Report on Military Supplemental
Salary Calculation Analysis

DATE: April 13, 2005

Approved

Ray Winer

Date

4/14/05

RECOMMENDATION

Acceptance of Staff's report on Military Supplemental Salary calculation analysis.

BACKGROUND

On March 22, 2005, Staff provided a report to Council on the City's Military Leave Program and recommended Council approval to modify the original method of the calculation of supplemental salary. The original method for determining the supplemental salary paid to reservists was calculated by subtracting total military pay from total City pay. Staff's recommendation was to modify the supplemental salary calculation to exclude all military compensation received by the employee that was intended as reimbursement for expenses incurred while away from the City on active duty.

Staff recommended that military Base Pay, Basic Allowance for Housing and Special Pays be considered Regular Military Compensation for the purposes of calculating the City's supplemental salary. In addition, staff recommended that military Basic Allowance for Subsistence, Family Separation Allowance and Basic Allowance for Housing (when intended as a reimbursement for expenses), not be considered Regular Military Compensation for the purposes of calculating the City's supplemental salary.

The City Council approved this recommendation with direction to staff to calculate the maximum fiscal impact of providing supplemental pay for the ten (10) current City employees serving on active duty if the supplemental salary calculation was further modified to compare only City base salary to Military base salary (base-to-base method.) City Council further directed staff to analyze the potential costs of this base-to-base method of calculating supplemental salary based on the number of reservists called to active duty in past years.

ANALYSIS

Currently there are ten (10) City employees serving on active duty. Of the ten (10) employees, six (6) are receiving the supplemental salary from the City in accordance with the extended Military Leave

Benefits program. Of the four (4) employees who are not currently receiving the supplemental salary, three (3) have voluntarily elected not to receive the supplemental salary and one (1) earns more total income in the military than in his City capacity.

A cost analysis was done by reviewing the City and Military salaries of the ten (10) employees who are currently serving on active duty. Using this information, staff was able to calculate the average monthly and annual costs of various supplemental salary calculations; including the original calculation implemented in 2001 (Total City Pay minus Total Military Pay), the current calculation as approved by Council on March 22, 2005 (Total City Pay minus Partial Military Pay), and the base pay-to-base pay method of calculation (City Base Pay minus Military Base Pay).

The following table illustrates the differences in the annual costs of the supplemental salary using the three (3) methodologies. The calculations are based on the ten (10) employees that are currently out on active duty and use the number of employees who qualify for supplemental salary under each type of methodology. In prior years, up to sixty-two (62) City employees were active reservists during the course of one calendar year. Although not all were called to active duty, staff has calculated the potential annual cost if all 62 were to receive the supplemental salary. In addition, staff has computed the estimated annual costs for each type of calculation assuming there were 15 or 30 employees who qualified for the program.

Calculations Based on Current Qualifying Employees	<u>Original Method</u> City Pay - MIL Pay (6 employees qualify)	<u>Current Method</u> City Pay – Partial MIL (6 employees qualify)	<u>Base-to-Base Method</u> City Base – MIL Base (7 employees qualify)
Average Monthly Cost per Employee	\$1358	\$1894	\$2,728
Average Annual Cost per Employee	\$16,297	\$22,728	\$32,736
Total Estimated Annual Cost	\$97,776	\$136,368	\$229,152
Estimated Annual Costs			
<i>15 Employees (25%)</i>	<i>\$244,455</i>	<i>\$340,920</i>	<i>\$491,040</i>
<i>30 Employees (50%)</i>	<i>\$488,910</i>	<i>\$681,840</i>	<i>\$982,080</i>
<i>62 Employees (100%)</i>	<i>\$1,010,414</i>	<i>\$1,409,136</i>	<i>\$2,029,632</i>

On March 22, 2005, Council approved modifying the supplemental salary calculation to exclude military income intended as a reimbursement for expenses from the supplemental salary calculation, which is the "Current Method" listed in the table above. As a result, the supplemental salaries paid to reservists on active duty increased. If Council were to modify the calculation further by using the base to base calculation, the supplemental salaries paid to reservists on active duty would be increased significantly as the table above illustrates.

COST IMPLICATIONS

The 2004-2005 adopted budget already provides full salary and benefits for these employees. Therefore, no additional appropriations will be required to fund a modification to the supplemental salary calculation since these personnel costs are already budgeted. However, direct costs result from

lost productivity and any overtime or backfilling required to fill the positions of employees called to active duty.

PUBLIC OUTREACH

Not applicable.

COORDINATION

This memorandum was coordinated with the City Attorney's Office.

Approval of changes to the supplemental military pay calculation is subject to the meet and confer process under the Meyers-Milias-Brown Act. If the City Council modifies the supplemental salary calculation, the changes to the calculation would have to be contingent upon the approval of the City labor organizations.

CONCLUSION

The City has provided supplemental military leave in specific situations such as the Persian Gulf War and the Kosovo Conflict, and most recently related to military action stemming from terrorist acts. Council direction in these circumstances has been to provide a supplemental income to reservists called to active duty in order to bridge any gap between an employee's City income and their military income. This results in the employee earning the same total income while on active duty that they earn while working in their City capacity. The supplemental salary calculation as approved by Council on March 22, 2005, demonstrates the City's support of employees on active duty by ensuring that employees suffer no loss of pay.

It is recommended that the current supplemental salary calculation, which excludes all military income intended as a reimbursement to reservists and includes military income intended as compensation, remain in effect as approved by Council on March 22, 2005.

OUTCOME

The recommended outcome is that the current supplemental salary calculation as approved by Council on March 22, 2005, remain in effect and that no further modifications to the calculation be made.



Alex Gurza
Director, Office of Employee Relations



Scott P. Johnson
Director, Department of Finance



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Alex Gurza
Scott P. Johnson

SUBJECT: Recommendations for
Military Leave Supplemental Benefits

DATE: March 16, 2005

Approved

Kay Winer

Date

3/16/05

RECOMMENDATION

- 1.) Approval to modify the calculation of supplemental salary to exclude military compensation intended as a reimbursement for expenses incurred while on active duty in the City's supplemental salary calculation.
- 2.) Approval to modify the calculation for payment of supplemental salary when an eligible employee's pay stub has not been received.

BACKGROUND

On December 14, 2004, Staff provided an update to Council on the City's Military Leave Program and recommended Council extend the Program through December 2005. The City Council adopted Resolution No. 72451, extending the enhanced Military Leave Program to employees called to active military duty during the period from January 1, 2003 to December 31, 2005, for reasons related to terrorist attacks or impending or actual armed conflict. In addition, Council provided direction to Staff to report back to Council in sixty to ninety days regarding the following items:

- (1) Exclude compensation received as an allowance or reimbursement for expenses incurred while on active duty from the calculation of military salary for purposes of determining the amount of supplemental pay.
- (2) Meet with impacted employees who have returned from active duty and with payroll/finance representatives of military forces to better understand how the City interprets pay stubs received from the military.
- (3) Develop additional changes to the City's supplemental pay policy, based on the above meetings, to simplify paperwork requirements for City staff and reservists alike.
- (4) Review the current payroll policy that automatically provides 25% of the employee's salary to be paid if the eligible employee's pay stub has not been submitted yet and develop

BACKGROUND (cont'd.)

alternatives to better represent the correct amount owed to the employee, with the goal of avoiding paybacks by reservists while still providing bridge pay during transitions.

- (5) Work with the City's bargaining units to develop a system that will allow members of the Reserves and National Guard who have not been called to active duty to use flex shifts and flex hours so they can better balance their jobs and the demands of military training when not on active duty.
- (6) Report back to the City Council in a sixty to ninety day timeline, with a review of the recommendations above including an analysis of potential savings or costs associated with these recommendations, and also obtaining customer service feedback from the families as part of this process.
- (7) Apply the Resolution to all members of the Reserves or National Guard who are called to active duty for more than thirty (30) days for any reason prior to the expiration of the Resolution; and,
- (8) In order to continue providing military benefits to those reservists who will remain beyond the 26 pay periods, and to those who may be called to active duty in the future, Staff was further directed to extend the military benefits for City employees from December 31, 2004 to December 31, 2005.

The purpose of this memo is to provide City Council with information and staff recommendations related to the items noted above.

ANALYSIS

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 to include supplemental salary and continuation of employees' benefits. Please refer to Attachment I, *Council Memo dated 12-14-04*, for further background on the benefits provided to employees.

On December 14, 2004, City Council adopted Resolution No. 72451 which 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 City Council also directed Staff to review the above recommendations and report back to the City Council including an analysis of potential savings or costs associated with the recommendations and to obtain customer service feedback from the families and employees who have participated in the Program.

ANALYSIS (cont'd.)

Military pay consists of several types of pay including basic pay, allowances and reimbursements. Each of these pay types is dependent on an individual's particular situation. Please refer to Attachment II, *Chart of Military Pays*.

The Enhanced Military Leave Benefits program is meant to ensure that City employees who are called to active duty receive the same total amount of pay while they are on active duty as they would receive if they were working their normal City jobs. Employees who earn more income in their City position than in their military position are eligible to receive a supplemental salary to make up the difference in income. To calculate an employee's supplemental salary, the employee's total military salary including allowances, such as Basic Allowance for Housing or Family Separation Allowance is subtracted from the employee's City salary (including premium pays such as Holiday-in-Lieu or Anti-Terrorist pay.) The difference in pays is what is paid to an employee as supplemental salary.

The following items are staff recommendations regarding the follow-up items from the December 14, 2004 Council Meeting:

1. **Exclude military compensation received as an allowance or reimbursement for expenses incurred while on active duty from the calculation of military salary for purposes of determining the amount of supplemental pay.**

Staff has researched the many types of military pay to determine which pays are intended as a reimbursement to reservists for expenses incurred as a result of being called to active duty and which pays are intended as additional compensation. Please refer to Attachment II, *Chart of Military Pays* for military pay explanations and staff recommendations.

It is recommended that any changes made to the supplemental salary calculation take effect on March 26, 2005 (beginning of a pay period), and that the changes not be retroactive. Recommendations to *exclude* a pay from the supplemental salary calculation will result in a higher City supplemental salary than is currently paid.

Below is a summary of the intent of the most common military pays:

Basic Pay

Military Basic Pay is based on a reservist's rank and years of service.

Basic Allowance for Subsistence (BAS)

Basic Allowance for Subsistence is 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 and is adjusted each year based upon the increase of the price of food as measured by the USDA food cost index. As of January 1, 2002, all members of the military receive full BAS as part of their pay; however, they are required to pay for their meals, including those provided by the government.

ANALYSIS (cont'd.)

It is recommended that BAS be excluded from the City's supplemental salary calculation as BAS is intended as a reimbursement for expenses incurred.

Basic Allowance for Housing (BAH)

According to the Office of the Secretary of Defense Military Compensation website, Basic Allowance for Housing is considered to be part of an enlisted member's Regular Military Compensation (RMC).

RMC is considered to be the military equivalent of private sector salaries. BAH is intended to offset the cost of housing when a member of the military does not receive government housing.

The BAH is calculated using the reservist's rank and zip code, and whether or not the reservist has dependents. The BAH calculation is not affected by how many dependents the reservist may have. For example, a reservist would receive the same BAH if he had one (1) dependent or five (5) dependents. Below is an example of a BAH calculation for a reservist living in Santa Clara County:

Basic Allowance for Housing Calculation

Rank:	E-5
Zip Code:	95112
Monthly Allowance:	
With Dependents:	\$2207.00
Without Dependents:	\$1808.00

Orders Under Title 10

Because reservists are typically called to duty under Title 10 of the United States Code (more commonly known as Presidential Recall), they are usually provided with government housing. However, these reservists still receive BAH as part of their RMC based on their dependency status, pay grade and permanent zip code.

The intent of BAH is to provide reservists with equitable housing compensation based on local housing costs. Because reservists called to active duty under Title 10 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.

It is recommended that BAH be included in the City's supplemental salary calculation when government housing is either provided or out-of-pocket housing expenses are reimbursed.

Orders other than Title 10

When reservists are called to active duty under orders other than Title 10, there may be instances in which government housing is not provided and the reservist may incur out of pocket housing expenses.

ANALYSIS (cont'd.)

In such situations, the reservist would receive their regular military compensation including BAH which is intended to help maintain their permanent residence. However, they may not receive reimbursement for housing expenses at the location at which they are serving.

The approximate out of pocket expense for housing that a reservist would incur if government housing were not provided could be calculated using the BAH for the zip code to which the reservist will be stationed.

For example:

Basic Allowance for Housing Comparison

<i>Permanent Zip Code BAH:</i>	<i>\$2,207</i>
<i>Duty Zip Code BAH:</i>	<i>\$1,207</i>

In this case, the \$1,207 *Duty Zip Code BAH* received would be subtracted from the reservist's total military pay, therefore increasing the reservist's City supplemental salary by \$1,207 to cover housing expenses incurred from being called to active duty.

It is recommended that a portion of the BAH (based on the reservist's duty location) be excluded from the City's supplemental salary calculation when government housing is not provided and out-of-pocket expenses are not reimbursed.

Family Separation Allowance (FSA)/Family Separation Housing (FSH)

There are two types of Family Separation Allowance (sometimes referred to as Family Separation Housing) payable to members of the military. 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.

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.

It is possible that a reservist may be eligible to receive both types of FSA during the same period.

It is recommended that the FSA/FSH be excluded from the City's supplemental salary calculation as FSA/FSH is intended as a reimbursement for expenses incurred.

Per Diem, Travel and Transportation Allowances

Per Diem, Travel and Transportation Allowances are intended to reimburse a member of the military for expenses associated with travel or temporary duty, including lodging, meals, airfare, etc.

ANALYSIS (cont'd.)

It is recommended that Per Diem, Travel and Transportation Allowances be excluded from the City's supplemental salary calculation, as they are intended as a reimbursement for expenses incurred.

Special Pays

There are over forty (40) types of special pay for which members of the military may qualify. The most common include Flight Pay, Diving Pay, Sea Pay, Submarine Duty Pay, Imminent Danger Pay, Hardship Duty Pay for Location and Hazardous Duty Incentive Pay.

Flight Pay, Diving Pay, Sea Pay and Submarine Duty Pay, as well as a professional bonus for medical personnel, are among the pays designed to compensate service members with certain skills and to retain them in the military.

Pays such as Imminent Danger Pay (IDP) and Hardship Duty Pay for Location (HDP-L) are based on the reservist's duty location. Through additional compensation, IDP recognizes service members on duty in foreign areas who, because of their role and visibility as a uniformed member, are subject to the threat of physical harm or imminent danger because of civil insurrection, civil war, terrorism, or wartime conditions.

HDP-L is additional compensation paid to service members assigned to locations where living conditions are substantially below those conditions encountered in the contiguous United States.

Hazardous Duty Incentive Pay (HDIP) is paid to reservists for certain assignments including demolition work, flight duty, parachuting, and exposure to certain toxic items.

There are many different types of special pays all of which are intended as additional compensation and not as reimbursement for expenses incurred. It is recommended that these special pays be included in the City's supplemental salary calculation.

2. Meet with impacted employees who have returned from active duty and with payroll/finance representatives of military forces to better understand how the City interprets pay stubs received from the military.

There are currently ten (10) City employees on active duty. Staff met with four (4) reservists, one (1) from each of the branches of the military including the Army, Marines, Air Force and Navy who have returned from active duty. The meetings were helpful in allowing staff to gain a better understanding of the intent of the many pays offered by the military and to review the Leave and Earning Statements issued by the military. The meetings also allowed reservists to explain the different situations that each reservist may face with respect to orders, pay, housing, dependents, and ability or lack of ability to access tools needed to communicate necessary information to City staff with regards to payroll issues.

ANALYSIS (cont'd.)

3. **Develop additional changes to the City's supplemental pay policy, based on the above meetings, to simplify paperwork requirements for City staff and reservists alike.**

Essentially, the employee will need to fill out three (3) forms: (1) a Leave of Absence form with the Department, (2) an Agreement between the City and the employee outlining the conditions and parameters of the Program that enables the employee to receive supplemental benefits and/or salary and (3) a Benefits Continuation form. These forms are necessary when an employee is called to active duty to ensure that their salary and benefits are handled correctly. Enhanced communication between departments and the Office of Employee Relations will help to ensure that employees are aware of the steps necessary to sign up for their extended benefits.

4. **Review the current payroll policy that automatically provides 25% of the employee's salary to be paid if the eligible employee's pay stub has not been submitted and develop alternatives to better represent the correct amount owed to the employee, with the goal of avoiding paybacks by reservists while still providing bridge pay during transitions.**

→ how has this changed from previous practice?

The "twenty-five percent" calculation guideline was established in 2003. This requires the City to pay twenty-five percent of an eligible employee's City pay (for a maximum period of ninety (90) days) until a pay stub is received by the Finance Department from the eligible employee. Administering this rule requires active manual monitoring. Although this was established to prevent overpayments to employees until sufficient documentation was received by the City, administering this aspect of the Program is challenging since many of these employees have been in active combat zones, thus posing difficulties for them to transmit this information to the City in a timely fashion. As a result, Finance/Payroll staff has continued paying these employees beyond the 90-day period, and in many cases the documentation is not received until after the employee returns back to the City. This may result in an over or under payment to the employee.

As an alternative to using 25% of the employee's City salary as the supplemental salary when an employee's military pay stub is not received, it is possible to more accurately calculate the employee's military pay by utilizing the following information:

- Employee's rank in the military
- Employee's years of service in the military
- Employee's permanent zip code
- Whether or not the employee has dependents

This information would be available to staff when the employee is signing up for Military Leave Benefits and will allow staff to look up the employee's military base pay based on rank and years of service, and the employee's BAH based on rank, zip code and dependent status. Because these two items make up a majority of a reservist's military pay, the estimated supplemental salary paid to the

ANALYSIS (cont'd.)

employee will be considerably more accurate than a flat 25% guideline. It is important to note that staff will not be able to account for special pays such as flight pay, imminent danger pay, etc. and that changes in a reservist's military status and pay may change from one pay period to the next; therefore some level of reconciliation may be needed upon the reservist's return to City employment.

It is recommended that the current payroll policy of automatically providing 25% of the employee's salary to be paid if the eligible employee's pay stub has not been received, be modified to the above mentioned method of calculation.

- 5. Work with the City's bargaining units to develop a system that will allow members of the Reserves and National Guard who have not been called to active duty to use flex shifts and flex hours so they can better balance their jobs and the demands of military training when not on active duty.**

Flex Time is defined as, on an occasional basis, allowing an employee to work less than the scheduled hours on one day and more on other days in order to complete a 40-hour workweek. To the extent that Flex Time can be used under an employee's applicable Memorandum of Agreement and no overtime will be incurred, Flex Time shifts are an option that supervisors can utilize to help employees balance their jobs and military training. Flex Time shifts should not be used in situations in which overtime may occur as a result of the Flex Shift. It should be noted that not all job functions within the City have schedules that are suitable for using Flex Time.

In situations in which Flex Time is not feasible, it may be possible for the employee to adjust their shifts or days worked within the same workweek so that they may change their days off in accordance with their military training. Adjusting shifts or days worked should not be used in instances in which it would cause the employee to incur overtime. For example, an employee who normally works four (4) days, ten (10) hours per day, Monday through Thursday, and has military training on Saturday and Sunday, could request to adjust their Monday shift following the training to work a Friday shift instead. This would allow the employee to attend training on the weekend, have a day off, and then work their normal forty (40) hours, Tuesday through Friday. However, not all positions within the City will be able to accommodate adjusting or changing shifts or days worked due to departmental staffing situations or job function necessity.

It is recommended that supervisors and employees consider departmental staffing needs when trying to accommodate an employee's work and military training schedule and that adjustments of workdays be utilized if possible.

- 6. Report back to the City Council in a sixty to ninety day timeline, with a review of the recommendations above including an analysis of potential savings or costs associated with these recommendations; and also obtaining customer service feedback from the families as part of this process.**

ANALYSIS (cont'd.)

The reservists that met with staff expressed their sincere gratitude for the Military Leave Salary and Benefits that were provided to them by the City. Many reservists stated that other members of the military with whom they served did not have the same level of benefits or supplemental salary and that they and their families were grateful to the City for providing the benefits.

Suggestions that were made to improve the Military Leave Benefits program included:

- Clarifying to the employee how much supplemental salary they would receive if their military pay stub were not received by Finance/Payroll.
- Developing together an information packet for the employee's family with all of the information regarding the Military Leave Benefits Program.
- Having one point of contact for the employee and their families to contact.

Staff has developed an information packet to distribute to reservists and their families that contains copies of the Military Leave Policy, the Agreement between the reservist and the City, contact information, an example of how the employee's supplemental salary will be calculated, and a list of all benefits that will be continued. In addition, Mark Burton, Deputy Director of Finance – Accounting Division, has been identified as the “one point of contact” for employees to go to with questions or concerns.

↳ copies?

COST IMPLICATIONS

The 2004-2005 adopted budget already provides full salary and benefits for these employees. Therefore, no additional appropriations will be required to fund the above recommendations since these personnel costs are already budgeted. However, direct costs result from lost productivity and any overtime or backfilling required to fill the positions of employees called to active duty.

The costs of excluding the BAS and FSA from the supplemental salary calculation for the reservists who are currently on active duty are estimated to be approximately \$18,000 for the remainder of Calendar year 2005.

It is difficult to quantify the total additional supplemental pay costs of the recommendations since per diem allowances will vary and only some reservists will qualify for the partial BAH calculation. Additionally, we have no way of knowing how many reservists will be called to active duty in the coming year.

PUBLIC OUTREACH

Not applicable.

COORDINATION

This memorandum was coordinated with the City Attorney's Office.

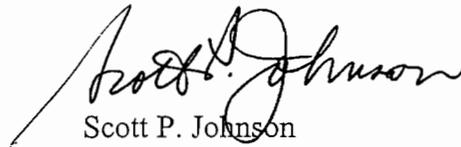
The approval of the changes to the supplemental military pay calculation is subject to the meet and confer process under the Meyers-Milias-Brown Act. Communication was provided to the bargaining unit representatives. If the City Council adopts the recommendation, the approval would have to be contingent upon the approval of the City labor organizations.

CONCLUSION

It is recommended that the supplemental salary benefit extended to reservists by Resolution No. 72451 be modified to exclude those military pays that are intended as reimbursement to reservists for expenses incurred as a result of being called to active duty as defined in this memo and the *Chart of Military Pays* attached. It is also recommended that the supplemental salary calculation when a reservist's military pay stub is not received be modified.



Alex Gurza
Director, Office of Employee Relations



Scott P. Johnson
Director, Department of Finance

Attachments



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: December 9, 2004

Approved

Ray Wines

Date

12/10/04

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, 2005, 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.

BACKGROUND

Under City policy and State and Federal law, City employees who are military reservists are eligible for their full salary 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.

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 all allowances received) 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

December 9, 2004

Subject: Extension of the Military Benefits Eligibility for City Employees Called to Active Military Duty

Page 2 of 9

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.

Due to the City's commitment and support of its military reservists and National Guard employees, in March 2004 the Secretary of Defense nominated the City of San Jose for the prestigious Secretary of Defense Employer Support Freedom Award. As a result of the War on Terrorism, the military continues to activate large numbers of reserves and members of the National Guard. Many reservists continue to be called to active duty. The City of San Jose continues to support employees called to active duty by providing an enhanced military leave program.

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

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

December 9, 2004

Subject: Extension of the Military Benefits Eligibility for City Employees Called to Active Military Duty

Page 3 of 9

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. Those who elected not to return to City service were notified that 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 2005

In developing the recommendation, the following consideration was made:

- That a Resolution be adopted providing supplemental salary and/or benefits for the entire time on military leave, beyond the initial thirty (30) days of military leave, for those employees who are called to active military duty related to terrorist attacks or impending or actual armed conflict with an end date for eligibility of December 31, 2005.

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, 2005, 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. The military supplemental pay will be calculated using the employee's City salary at the time of the employee's call to active duty, including any premium pay, and will be compared to the military pay, including any military allowances received. The military pay is estimated on the basis of the employee's military rank, years of service, and the information on the military orders, if available. In determining the supplemental pay, the City takes into account all taxable and non-taxable military pay including the basic pay and all extra pay or allowances received including, but not limited to, dependent allowances, housing, hazardous duty, flight pay, hardship duty pay, Hostile Fire,

December 9, 2004

Subject: Extension of the Military Benefits Eligibility for City Employees Called to Active Military Duty

Page 4 of 9

COLA, Family Separation Allowances, Subsistence Allowances, and Basic Housing Allowance:

Eligible employees are required to provide copies of their military pay stubs for reconciliation purposes. The supplemental payments are calculated by the Finance Department upon receipt of the initial military pay stub and reconciled by the Finance Department at the time the employee returns, or soon after receiving the final documentation from the employee. Employees receive 25% of their City salary for the first ninety (90) days, unless military pay stubs are received to determine the actual amount of the supplement pay, if applicable. After ninety (90) days, if the military check stubs are not received, the supplemental pay is terminated until the stubs are received. It should be noted that payroll staff have continued to pay beyond the ninety-day period and staff is recommending a modification to this calculation guideline extending the twenty-five percent of City pay until the employee submits a military pay stub to allow the calculation of the supplemental pay. This may result in employees needing to reimburse the City for any overpayment.

Benefits Administration Under the Military Supplemental Pay Program

Below is a summary of how the City's benefits are administered under this program:

Medical Insurance

Employees and their eligible dependents continue to receive benefits through the City's health plans as long as the City and employees continue to pay the premiums in the same ratio as for other active employees. This allows our employees and their dependents to continue to use their current doctors and hospitals.

In addition, the United States government provides a health plan for active military personnel and their dependents. Benefits include prescription and vision coverage. If the City continues to pay the employees' health care premiums, the City's plans are the primary provider for the employees' benefits and the federal plan is the secondary provider, except that the federal plan is primary for injuries and illnesses that are suffered in the line of duty. For all dependents, the insurance industry's standard "coordination of benefit" rules continue to apply.

Employees who elect to continue benefits are required to submit payment to the City or agree to submit payment for any owed amounts upon release from active duty.

Dental Insurance

The City continues to provide dental coverage for the employee and dependents. The United States government provides coverage for its members' and dependents' dental care. If the City continues to pay the employee's dental care premiums, the City's plans are the primary provider for the employee's benefits and the federal plan is the secondary provider, except

that the federal plan is primary for injuries and illnesses that are suffered in the line of duty. For all dependents, the insurance industry's standard "coordination of benefit" rules continue to apply.

Life Insurance

The City continues to pay the Standard Life Insurance Policy that is provided to benefited City employees. That Policy provides continuation of basic coverage for up to 180 days after the date of activation in accordance with our allowable Leave of Absence period provided in our Group Life Insurance Policy.

Retirement

Sections 3.28.630 and 3.36.620 of the San Jose Municipal Code provide that, following return to active employment after active military duty, the city shall pay the portions of the contribution rates owed by both the City and the employee. Following return from active duty within the guidelines of Sections 3.28.630 and 3.36.620, the City will pay the applicable retirement system the amount of City and employee contributions that are due.

Vacation/Sick Leave Accruals

Eligible employees shall continue to accrue leave balances such as sick leave and vacation while on active military duty. Employees receiving payment of supplemental compensation and/or benefits are not eligible to use these accrued balances while on active duty.

Personal Leave and Executive Leave

Employees are eligible for either Executive Leave or Personal Leave (varies by bargaining unit). Personal Leave and Executive Leave are not accrued benefits. They are "use it or lose it" benefits based on the payroll calendar year. Employees receiving payment of supplemental compensation and/or benefits are not eligible to use this leave while on active duty.

Uniform Allowance

Uniform Allowance is calculated as a pro-rated amount based on hours worked. Employees receiving payment of supplemental compensation and/or benefits are not eligible to receive a Uniform Allowance.

Challenges Experienced in Calculating, Monitoring and Reconciling Military Supplemental Pay

The City continues to encounter challenges in reconciling military supplemental pay since calculating, monitoring and reconciling these benefits is fully dependent on manual processes that are not automated features in the City's HR/Payroll system.

December 9, 2004

Subject: Extension of the Military Benefits Eligibility for City Employees Called to Active Military Duty

Page 6 of 9

Some of the challenges that Finance payroll staff has experienced are due to the lack of sufficient documentation received from eligible employees at the time these payments are processed in the payroll system. Lacking the receipt of military pay stubs or changes in reported military pay from one pay period to the next results in under or over payments that must be reconciled when the necessary documentation is received by the City from the Reservist. Below are some examples that have resulted in the need to reconcile over and under payments of military supplemental pay.

One challenge is the "twenty-five percent" calculation guideline established in 2003. This requires the City to pay twenty-five percent of an eligible employee's City pay (for a maximum period of ninety (90) days) until a pay stub is received by Finance from the eligible employee. Administering this rule requires active manual monitoring. Although this was established to prevent overpayments to employees until sufficient documentation was received by the City, the challenge in administering this is due to the fact that many of these employees have been in active combat zones; therefore posing difficulties for them to transmit this information to the City in a timely fashion. As a result, payroll staff has continued paying these employees beyond the 90 day period and in many cases the documentation is not received until after the employee returns back to the City. This may result in an over or under payment to the employee because when we finally receive the needed pay stubs, we have found that the military pay has been either more or less than the estimated amount that payroll used to make the military supplemental pay calculations. It should be noted that payroll staff have continued to pay beyond the ninety-day period and staff is recommending a modification to the 25% calculation guideline extending the twenty-five percent of City pay until the employee submits a military pay stub to allow the calculation of the supplemental pay.

Another situation that can result in over or under payments is where the City receives a military pay stub, calculates the military supplemental pay based on this information, and then later finds out that future pay stubs show additional pay that the employee has received from the military that were not included on the initial pay stub used to make the supplemental pay calculations.

Finally, we have also experienced situations in which the supplemental pay calculation is based on information from the military pay stubs and the military later makes significant adjustments, retroactively to the eligible employee's military pay. This results in an over or under payment of military supplemental pay from the City.

Annual Reconciliation Process

Finance payroll staff are currently in the process of the annual reconciliation of military supplemental pay. Within the past two calendar years, there have been approximately forty (40) City employees that have been active. Ten (10) Reservists are currently on active duty. The remaining employees have returned to City employment within the past two years. Payroll staff is currently in the process of reconciling all active duty and non-active duty Reservists who have been on active duty and have since returned to work at the City. Payroll staff has determined that some of the employees eligible for this program did not meet the

December 9, 2004

Subject: Extension of the Military Benefits Eligibility for City Employees Called to Active Military Duty

Page 7 of 9

criteria to receive military supplemental pay (their military pay exceeded their City pay). As of November 1, 2004, the City has paid over \$438,000 for military supplemental pay over the past two years to twenty-four (24) City employees.

Finance payroll staff is currently in the process of requesting additional information from many of the employees who have been on active duty at some time during the past two years to reconcile the supplemental pay they have received to date or that may be due to them. After the reconciliations are complete, in the event that the employee may have been overpaid, the City's practice has been to work out a re-payment schedule with the employee in mutually acceptable terms to the City and the employee that will not cause undue hardship on the employee. In the event that it is determined that the City owes the employee additional military supplemental pay, an adjustment is made in the payroll process to pay the employee.

Additional Administrative Procedures Implemented in Finance - Payroll

Due to the reconciliation challenges noted above, the Finance Department is in the process of making changes to the administrative procedures regarding calculating, monitoring and reconciling military supplemental pay.

Given the extensive manual processes required to administrate this program, additional review procedures have been implemented in the administration of military supplemental pay benefits. Additional supervisory and management staff is assisting in tracking information and verifying calculations of the supplemental pay. This supervisory review and sign-off step has been implemented to take place prior to final processing through the payroll system. Finance staff is also in the process of automating part of this process into an application database to provide support in calculating military supplemental pay and to track the various limits and parameters in the program as defined by the Council resolutions.

Wage Reporting/Taxation

Currently the City has calculated all supplemental compensation for eligible employees as regular wages that would normally be reported on a W-2. Recent new interpretation of the Internal Revenue Service (IRS) regulations (October 2004) by the IRS has determined that reservists who are called to active duty in the armed forces can no longer be treated as employees by their employers, in this case the City. Because of this ruling, the supplemental wages paid in 2004 must be considered Miscellaneous Income to the reservist. Since these payments are considered Miscellaneous Income and not wages, the City cannot withhold Federal Taxes and must refund to the employee any withholding back to the beginning of the calendar year.

Also, the City will be required to report these wages on IRS form 1099 as miscellaneous income rather than on a wage statement W-2. Those employees who have received this benefit will be advised to consult with a tax professional about making an estimated tax

payment in January of 2005. Finance anticipates implementation of this new IRS interpretation will be made on the affected employee's final paycheck for 2004. The IRS interpretation also specifies that the imputed income portion of Life Insurance premiums, if applicable, should also be reported on the 1099.

Staff is currently in the process of analyzing this new IRS interpretation to determine the proper treatment of retirement and other benefits provided to eligible employees under the City's military supplemental pay program.

COST IMPLICATIONS

The 2004-2005 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.

PUBLIC OUTREACH

Not applicable.

COORDINATION

This memorandum was coordinated with the Offices of the City Manager, Employee Relations, and the City Attorney and the Departments of Employee Services and Finance.

The extension of supplemental paid military leave and/or benefits is subject to the meet and confer process under the Meyers-Milias-Brown Act. Communication was provided to the bargaining unit representatives. If the City Council adopts the recommendation, the approval would have to be contingent upon the approval of the City labor organizations.

HONORABLE MAYOR AND CITY COUNCIL

December 9, 2004

Subject: Extension of the Military Benefits Eligibility for City Employees Called to Active Military Duty

Page 9 of 9

CONCLUSION

Our Reserves and National Guard continue to be called to active duty to serve their country. It is recommended that a Resolution be adopted extending the Military Benefits eligibility to December 31, 2005, for City employees who are called to active military duty related to terrorist attacks or impending or actual armed conflict.



Alex Gurza
Director, Office of Employee Relations



Scott P. Johnson
Director, Department of Finance

ATTACHMENT II
Chart of Military Pays

ALLOWANCE	DESCRIPTION OF ALLOWANCE	CURRENT RATES	RECOMMENDATION
Basic Pay	Based on a reservist's rank and years of service. (Compensation)	Depends on rank and years of service	Include in Supplemental Salary Calculation
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)	Depends on rank, zip code and dependency status	
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.		Include in Supplemental Salary Calculation when provided with govt. housing or when reimbursed for out of pocket housing expenses.
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.		Exclude a portion of BAH from calculation when not provided govt. housing or not reimbursed for out of pocket housing expenses.
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)	\$183.99 per month for Officers \$267.18 per month for Enlisted Members	Exclude BAS from the Supplemental Salary Calculation
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)	Depends on the overseas location	Exclude from the Supplemental Salary Calculation

ATTACHMENT II
Chart of Military Pays

ALLOWANCE	DESCRIPTION OF ALLOWANCE	CURRENT RATES	RECOMMENDATION
Family Separation Allowance (FSA or FSH) <i>Type II</i>	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)	\$250 per month	Exclude from the Supplemental Salary Calculation
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)	Depends on expenses incurred.	Exclude from the Supplemental Salary Calculation
Special Pays			
<i>Flight Pay, Diving Pay, Sea Pay, Submarine Duty Pay</i>	Designed to compensate service members in certain missions with certain skills and to retain them in the military. (Compensation)	Depends on the reservist's rank, and in some instances years of experience.	Include in the Supplemental Salary Calculation
<i>Imminent Danger Pay (IDP)</i>	IDP recognizes through additional compensation service members who are subject to the threat of physical harm or imminent danger. IDP is for service members serving within an officially declared hostile fire/imminent danger zone. (Compensation)	\$225 per month	Include in the Supplemental Salary Calculation
<i>Hardship Duty Pay for Location (HDP-L)</i>	Paid in recognition of the extraordinarily arduous living conditions, excessive physical hardship, and/or unhealthful conditions that exist in the area. (Compensation)	Depends on the reservist's duty location	Include in the Supplemental Salary Calculation
<i>Hazardous Duty Incentive Pay (HDIP)</i>	Paid to reservists for certain assignments including demolition work, flight duty, exposure to certain toxic items and parachuting. (Compensation)	Based on the reservist's pay grade	Include in the Supplemental Salary Calculation

Note: This chart represents the most common Military Pays. Any other Military Pay received by employees will be analyzed to determine if it is compensation or reimbursement for expenses incurred.



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: December 9, 2004

Approved

Kay Wines

Date

12/10/04

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, 2005, 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.

BACKGROUND

Under City policy and State and Federal law, City employees who are military reservists are eligible for their full salary 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.

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 all allowances received) 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.

Due to the City's commitment and support of its military reservists and National Guard employees, in March 2004 the Secretary of Defense nominated the City of San Jose for the prestigious Secretary of Defense Employer Support Freedom Award. As a result of the War on Terrorism, the military continues to activate large numbers of reserves and members of the National Guard. Many reservists continue to be called to active duty. The City of San Jose continues to support employees called to active duty by providing an enhanced military leave program.

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

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. Those who elected not to return to City service were notified that 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 2005

In developing the recommendation, the following consideration was made:

- That a Resolution be adopted providing supplemental salary and/or benefits for the entire time on military leave, beyond the initial thirty (30) days of military leave, for those employees who are called to active military duty related to terrorist attacks or impending or actual armed conflict with an end date for eligibility of December 31, 2005.

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, 2005, 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. The military supplemental pay will be calculated using the employee's City salary at the time of the employee's call to active duty, including any premium pay, and will be compared to the military pay, including any military allowances received. The military pay is estimated on the basis of the employee's military rank, years of service, and the information on the military orders, if available. In determining the supplemental pay, the City takes into account all taxable and non-taxable military pay including the basic pay and all extra pay or allowances received including, but not limited to, dependent allowances, housing, hazardous duty, flight pay, hardship duty pay, Hostile Fire,

COLA, Family Separation Allowances, Subsistence Allowances, and Basic Housing Allowance.

Eligible employees are required to provide copies of their military pay stubs for reconciliation purposes. The supplemental payments are calculated by the Finance Department upon receipt of the initial military pay stub and reconciled by the Finance Department at the time the employee returns, or soon after receiving the final documentation from the employee. Employees receive 25% of their City salary for the first ninety (90) days, unless military pay stubs are received to determine the actual amount of the supplement pay, if applicable. After ninety (90) days, if the military check stubs are not received, the supplemental pay is terminated until the stubs are received. It should be noted that payroll staff have continued to pay beyond the ninety-day period and staff is recommending a modification to this calculation guideline extending the twenty-five percent of City pay until the employee submits a military pay stub to allow the calculation of the supplemental pay. This may result in employees needing to reimburse the City for any overpayment.

Benefits Administration Under the Military Supplemental Pay Program

Below is a summary of how the City's benefits are administered under this program:

Medical Insurance

Employees and their eligible dependents continue to receive benefits through the City's health plans as long as the City and employees continue to pay the premiums in the same ratio as for other active employees. This allows our employees and their dependents to continue to use their current doctors and hospitals.

In addition, the United States government provides a health plan for active military personnel and their dependents. Benefits include prescription and vision coverage. If the City continues to pay the employees' health care premiums, the City's plans are the primary provider for the employees' benefits and the federal plan is the secondary provider, except that the federal plan is primary for injuries and illnesses that are suffered in the line of duty. For all dependents, the insurance industry's standard "coordination of benefit" rules continue to apply.

Employees who elect to continue benefits are required to submit payment to the City or agree to submit payment for any owed amounts upon release from active duty.

Dental Insurance

The City continues to provide dental coverage for the employee and dependents. The United States government provides coverage for its members' and dependents' dental care. If the City continues to pay the employee's dental care premiums, the City's plans are the primary provider for the employee's benefits and the federal plan is the secondary provider, except

that the federal plan is primary for injuries and illnesses that are suffered in the line of duty. For all dependents, the insurance industry's standard "coordination of benefit" rules continue to apply.

Life Insurance

The City continues to pay the Standard Life Insurance Policy that is provided to benefited City employees. That Policy provides continuation of basic coverage for up to 180 days after the date of activation in accordance with our allowable Leave of Absence period provided in our Group Life Insurance Policy.

Retirement

Sections 3.28.630 and 3.36.620 of the San Jose Municipal Code provide that, following return to active employment after active military duty, the city shall pay the portions of the contribution rates owed by both the City and the employee. Following return from active duty within the guidelines of Sections 3.28.630 and 3.36.620, the City will pay the applicable retirement system the amount of City and employee contributions that are due.

Vacation/Sick Leave Accruals

Eligible employees shall continue to accrue leave balances such as sick leave and vacation while on active military duty. Employees receiving payment of supplemental compensation and/or benefits are not eligible to use these accrued balances while on active duty.

Personal Leave and Executive Leave

Employees are eligible for either Executive Leave or Personal Leave (varies by bargaining unit). Personal Leave and Executive Leave are not accrued benefits. They are "use it or lose it" benefits based on the payroll calendar year. Employees receiving payment of supplemental compensation and/or benefits are not eligible to use this leave while on active duty.

Uniform Allowance

Uniform Allowance is calculated as a pro-rated amount based on hours worked. Employees receiving payment of supplemental compensation and/or benefits are not eligible to receive a Uniform Allowance.

Challenges Experienced in Calculating, Monitoring and Reconciling Military Supplemental Pay

The City continues to encounter challenges in reconciling military supplemental pay since calculating, monitoring and reconciling these benefits is fully dependent on manual processes that are not automated features in the City's HR/Payroll system.

Some of the challenges that Finance payroll staff has experienced are due to the lack of sufficient documentation received from eligible employees at the time these payments are processed in the payroll system. Lacking the receipt of military pay stubs or changes in reported military pay from one pay period to the next results in under or over payments that must be reconciled when the necessary documentation is received by the City from the Reservist. Below are some examples that have resulted in the need to reconcile over and under payments of military supplemental pay.

One challenge is the "twenty-five percent" calculation guideline established in 2003. This requires the City to pay twenty-five percent of an eligible employee's City pay (for a maximum period of ninety (90) days) until a pay stub is received by Finance from the eligible employee. Administering this rule requires active manual monitoring. Although this was established to prevent overpayments to employees until sufficient documentation was received by the City, the challenge in administering this is due to the fact that many of these employees have been in active combat zones; therefore posing difficulties for them to transmit this information to the City in a timely fashion. As a result, payroll staff has continued paying these employees beyond the 90 day period and in many cases the documentation is not received until after the employee returns back to the City. This may result in an over or under payment to the employee because when we finally receive the needed pay stubs, we have found that the military pay has been either more or less than the estimated amount that payroll used to make the military supplemental pay calculations. It should be noted that payroll staff have continued to pay beyond the ninety-day period and staff is recommending a modification to the 25% calculation guideline extending the twenty-five percent of City pay until the employee submits a military pay stub to allow the calculation of the supplemental pay.

Another situation that can result in over or under payments is where the City receives a military pay stub, calculates the military supplemental pay based on this information, and then later finds out that future pay stubs show additional pay that the employee has received from the military that were not included on the initial pay stub used to make the supplemental pay calculations.

Finally, we have also experienced situations in which the supplemental pay calculation is based on information from the military pay stubs and the military later makes significant adjustments, retroactively to the eligible employee's military pay. This results in an over or under payment of military supplemental pay from the City.

Annual Reconciliation Process

Finance payroll staff are currently in the process of the annual reconciliation of military supplemental pay. Within the past two calendar years, there have been approximately forty (40) City employees that have been active. Ten (10) Reservists are currently on active duty. The remaining employees have returned to City employment within the past two years. Payroll staff is currently in the process of reconciling all active duty and non-active duty Reservists who have been on active duty and have since returned to work at the City. Payroll staff has determined that some of the employees eligible for this program did not meet the

criteria to receive military supplemental pay (their military pay exceeded their City pay). As of November 1, 2004, the City has paid over \$438,000 for military supplemental pay over the past two years to twenty-four (24) City employees.

Finance payroll staff is currently in the process of requesting additional information from many of the employees who have been on active duty at some time during the past two years to reconcile the supplemental pay they have received to date or that may be due to them. After the reconciliations are complete, in the event that the employee may have been overpaid, the City's practice has been to work out a re-payment schedule with the employee in mutually acceptable terms to the City and the employee that will not cause undue hardship on the employee. In the event that it is determined that the City owes the employee additional military supplemental pay, an adjustment is made in the payroll process to pay the employee.

Additional Administrative Procedures Implemented in Finance - Payroll

Due to the reconciliation challenges noted above, the Finance Department is in the process of making changes to the administrative procedures regarding calculating, monitoring and reconciling military supplemental pay.

Given the extensive manual processes required to administrate this program, additional review procedures have been implemented in the administration of military supplemental pay benefits. Additional supervisory and management staff is assisting in tracking information and verifying calculations of the supplemental pay. This supervisory review and sign-off step has been implemented to take place prior to final processing through the payroll system. Finance staff is also in the process of automating part of this process into an application database to provide support in calculating military supplemental pay and to track the various limits and parameters in the program as defined by the Council resolutions.

Wage Reporting/Taxation

Currently the City has calculated all supplemental compensation for eligible employees as regular wages that would normally be reported on a W-2. Recent new interpretation of the Internal Revenue Service (IRS) regulations (October 2004) by the IRS has determined that reservists who are called to active duty in the armed forces can no longer be treated as employees by their employers, in this case the City. Because of this ruling, the supplemental wages paid in 2004 must be considered Miscellaneous Income to the reservist. Since these payments are considered Miscellaneous Income and not wages, the City cannot withhold Federal Taxes and must refund to the employee any withholding back to the beginning of the calendar year.

Also, the City will be required to report these wages on IRS form 1099 as miscellaneous income rather than on a wage statement W-2. Those employees who have received this benefit will be advised to consult with a tax professional about making an estimated tax

payment in January of 2005. Finance anticipates implementation of this new IRS interpretation will be made on the affected employee's final paycheck for 2004. The IRS interpretation also specifies that the imputed income portion of Life Insurance premiums, if applicable, should also be reported on the 1099.

Staff is currently in the process of analyzing this new IRS interpretation to determine the proper treatment of retirement and other benefits provided to eligible employees under the City's military supplemental pay program.

COST IMPLICATIONS

The 2004-2005 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.

PUBLIC OUTREACH

Not applicable.

COORDINATION

This memorandum was coordinated with the Offices of the City Manager, Employee Relations, and the City Attorney and the Departments of Employee Services and Finance.

The extension of supplemental paid military leave and/or benefits is subject to the meet and confer process under the Meyers-Milias-Brown Act. Communication was provided to the bargaining unit representatives. If the City Council adopts the recommendation, the approval would have to be contingent upon the approval of the City labor organizations.

HONORABLE MAYOR AND CITY COUNCIL

December 9, 2004

Subject: Extension of the Military Benefits Eligibility for City Employees Called to Active Military Duty

Page 9 of 9

CONCLUSION

Our Reserves and National Guard continue to be called to active duty to serve their country. It is recommended that a Resolution be adopted extending the Military Benefits eligibility to December 31, 2005, for City employees who are called to active military duty related to terrorist attacks or impending or actual armed conflict.



Alex Gurza
Director, Office of Employee Relations



Scott P. Johnson
Director, Department of Finance