



Office of the City Auditor

Report to the City Council
City of San José

**SUPPLEMENTAL MILITARY
PAY AND BENEFITS:
REEXAMINATION AND
SIMPLIFICATION ARE
NEEDED**

Report 11-05
June 2011

June 8, 2011

Honorable Mayor and Members
Of the City Council
200 East Santa Clara Street
San José, CA 95113

Supplemental Military Pay and Benefits: Reexamination and Simplification Are Needed

Since 2001, and during previous shorter national mobilizations, the City has offered supplemental pay and benefits for employees serving active tours of duty as reservists. These benefits provide employees with income sufficient to bridge the gap between their City and military salaries, as well as medical insurance premium payments, and vacation and sick leave accruals. The City also provides retirement credit and makes both employer and employee contributions to the retirement systems for the entire period employees are on military leaves.

Although Created As a Short-Term Benefit, the City's Current Supplemental Military Program Is Now in Its Tenth Year. The current program was designed to provide a short-term benefit to reservists called to duty after 9-11. However, with nearly annual extensions to the Program and a 2007 declaration by City Council to keep the program going indefinitely, problems that could be overlooked for a small short-term program have become pressing and need to be resolved.

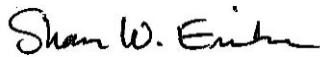
Reservists and administrative staff all find the City's military leave program frustrating, complex, and time consuming. There are many issues related to supplemental pay and confusion on how earnings are determined, and administrative expenses exceeding the cost of supplemental earnings themselves. We found that the program allows reservists the opportunity to earn more money while on leave than while working for the City and that the program encourages employees to take on dual careers.

In a time of major cuts to City staffing and almost 200 fewer Police positions, the City has approximately eight people (typically including six police officers) on military leaves at any given time. The permanent nature of the current Supplemental Military Leave Program puts additional pressure on already stretched resources.

Streamlining Is Possible, But Will Depend on Clarifying the Program's Intent. If the City Council wishes to continue to offer supplemental pay and benefits as on-going benefits, we recommend the Program be updated and streamlined to minimize administrative burdens and reservist hardships and increase reservist satisfaction with the Program. The current process is cumbersome, involving multiple reconciliations, resulting in high administrative costs and reservist dissatisfaction with the Program. We recommend simplifying the Program to reduce administrative costs and provide more certainty of payment for reservists. We found that implementing a flat rate supplemental payment scheme, based on City and military salaries at the commencement of a leave would reduce administrative costs and provide reservists with certainty about their income – something which many reservists expressed to us as a concern.

I will present this report at the June 16, 2011 meeting of the Public Safety, Finance, and Strategic Support Committee. We would particularly like to thank the City's military reservists for their service and for sharing their thoughts about the Program. We also thank the Finance Department Payroll Division, Human Resources Department, and Office of Employee Relations for their time and cooperation during the audit process. The Administration has reviewed the information in this report and their response is shown on the attached yellow pages.

Respectfully submitted,



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Introduction

In accordance with the City Auditor's 2010-11 Audit Workplan, we have completed an audit of the Supplemental Military Pay and Benefits Program (Program). The purpose of our audit was to find administrative efficiencies for the Program and determine if any adjustments could be made to reduce costs while still ensuring that the original Program intent is maintained of allowing City-employed reservists to serve our country with minimal financial impact.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We limited our work to those areas specified in the Audit Objective, Scope, and Methodology section of this report.

The Office of the City Auditor thanks the City's military reservists for their service and for sharing their thoughts about the Program. We also thank the management and staff of the Finance Department, the Human Resources Department, and the Office of the City Attorney for their cooperation and assistance during our review.

Background

The City's Military Leave Policy (which mirrors the minimum State-required benefits for public employees) allows reservists who have worked for the City for at least one year to receive their full City salary for the first thirty calendar days of any active duty, no more than once per fiscal year.

Historically, military reservists working for the City have taken unpaid leaves of absence for additional tour days when called to active duty with the military. State law provides that employees may apply for an unpaid military leave of absence for up to 180 days while engaged in military duty. Federal and State laws also require that reservists have the right to be reinstated to their civilian positions with the same seniority as they would have received if they had not taken a military leave.¹

In addition to these State and federal employment requirements, as far back as World War II, the City's Municipal Code has required that the City pay all retirement contributions (employer and employee) for the time employees spend

¹ Federal law limits this benefit to reservists who have accumulated less than five years total military service while with that employer.

in military service while on a City leave of absence, so long as the employee returns to City service within six months of military discharge. (For more details on laws and policies around military leaves, please see Appendix A.)

Additionally, since September 11, 2001, and for some other large-scale call-ups in the past, the City has enhanced benefits for reservists mainly by supplementing their military pay while on leave and allowing them to continue to receive employer health contributions.

Our understanding of the original idea behind supplementing pay and benefits was that the City Council wanted to allow City employees who were called up during military interventions to be able to do so without undue financial hardship. So pay was supplemented and other benefits were extended by resolution of the City Council in response to specific national events. Most recently, the Council enhanced benefits for reservists during:

- The Iraq-Kuwait Crisis for any call to active duty between September 1, 1990, and February 28, 1991
- The Kosovo Conflict for any call to active duty between May 31, 1999, and December 31, 2002
- The War on Terror and current Iraq War for any call to active duty from September 11, 2001 on (no end date has been established)

The City's supplemental benefit Program provides the following benefits:

- City positions will be held open for military leaves of absence of any length and there is no limit to how often one can serve
- The City will provide differential pay if the employee's City salary² would be higher than what they receive in the military³
- Reservists accrue sick and vacation leave with the City while on military leave of absence
- The City continues to pay the employer share of insurance benefits (medical, dental, Employee Assistance Program, and life insurance) so long as the employee elects to maintain coverage while on leave

Once an employee starts a military leave, they begin receiving their full City pay in addition to military pay for the first 30 days of their tour, pursuant to State law. If they are still on active duty after 30 days have elapsed, they no longer receive full City pay but, pursuant to Council resolution, can receive a portion of City

² For the list of City pays that are included in determining total City salary, please see Appendix B.

³ For the list of military pays included in determining total military salary, please see Appendix C.

pay, such that their City supplemental pay combined with military pay equals what they would have received with the City if they were not on leave.

Roles and Responsibilities

Military leaves are managed by the Payroll Section in the Finance Department (Payroll) and the Employee Benefits Division in Human Resources (HR). HR is responsible for setting up leaves, managing benefits, and communicating with reservists. Payroll is responsible for determining the amount of supplemental pay due to a reservist, managing accrued hours, vacation and sick leave times, and retirement accruals.

Audit Objective, Scope, and Methodology

The objectives of our audit of the Supplemental Military Pay and Benefits Program (Program) were to identify ways to improve and streamline administrative processes and to evaluate whether the Program could be improved. In order to address these objectives, we performed the following:

1. Spoke with City staff involved with managing and processing military leaves to gain an understanding of the work involved, cost of administration, problems that have arisen, and to assess for opportunities to streamline. We also met with the City Attorney's Office and the Office of Employee Relations to obtain a better understanding of the policy and legal issues involved.
2. Spoke with nine reservists who recently participated in the Program to hear their perspectives on what was working and not working, what they found valuable, and any other issues they thought would be relevant.
3. Reviewed 5 of the 28 most recent tours qualifying for the supplemental Program to ensure that the supplemental pay received was accurate and any outstanding amounts due from reservists to the City were calculated correctly. This also allowed us to review the process for methodology changes that would save administrative time.
4. Determined costs for the Program by running Payroll (PeopleSoft) queries.
5. Reviewed legal requirements, previous San José City Council discussions, and looked into military leave Programs used by other jurisdictions to determine the criteria for alternative military leave designs.

Supplemental Military Pay

We did not review the retirement credit or contributions the City pays on behalf of employees to ensure accuracy of those amounts, nor did we do detailed review of the accuracy of medical benefit contributions.

Finding I Although Created as a Short-Term Benefit, the City's Current Supplemental Military Program Is Now in Its Tenth Year

Summary

Reservists and administrative staff all find the City's military leave Program frustrating, complex, and time consuming. There are many issues related to supplemental pay and confusion on how earnings are determined, to administrative expenses exceeding the cost of supplemental earnings themselves. The current Program was designed to provide a short-term benefit to reservists called to duty after 9-11. However, with nearly annual extensions to the Program and a 2007 declaration by City Council to keep the Program going indefinitely, problems that could be overlooked for a small short-term program have become pressing and need to be resolved. As such, we found that:

- The Program is mainly based on a series of resolutions the Council passed between 2001 and 2007.
- The cost of fringe benefits outweighs the supplemental pay benefit.
- The Program allows reservists the opportunity to earn more money during leaves of absence than they would have while working their City jobs.

The Program's purpose should be revisited and codification is needed.

The Military Pay Program Is Mainly Based on a Series of Resolutions the Council Passed Between 2001 and 2007

On October 2, 2001, in the wake of the events of September 11, the City Council passed Resolution 70632 to provide supplemental salary and benefits for 13 pay periods (roughly six months) to any reservist called to active duty because of the terrorist attacks on September 11, 2001, with eligibility for salary and benefits ending for tours starting after December 31, 2002. At that time, it was considered likely that many reservists throughout the country and in City ranks would be called up.

In 2003, as the U.S. was still fighting the War on Terror, the City Council extended the Program and increased the benefit to last for 26 pay periods (one year). The City Council also added that reservists should accrue vacation and sick leave while on military leave. Later in 2003, the Council acted to extend the Program to last the entire length of active duty, not just 26 pay periods.

In 2004, Council acted to extend the Program to cover leaves from January 2003 through December 2005. In 2006, the Council extended the Program to last through December 2007.

In 2007, the Program Was Made Permanent

Finally, in December 2007, the Human Resources Director presented a recommendation to the City Council to extend the Program through 2008. Instead, the City Council eliminated the end date from the resolution and approved continuation of the Program indefinitely until further action of the Council. The City Council appears to have made this decision without analysis from staff on the ongoing costs or other implications this change could have.⁴

As this history shows, the focus of the Program in response to the events of September 11th was expanded to include military orders for any terrorist attacks or impending or actual armed conflict. This was a change from the previous supplemental benefit programs that were in effect for shorter-term military conflicts.

In the past, reservists could anticipate that most military leave time would be unpaid and only for specific large scale wars or conflicts would the City offer additional pay and benefits. The revised Program applies to all reservists all of the time.

The Cost of Fringe Benefits Outweighs the Supplemental Pay Benefit

The Program has fluctuated in size depending on the extent of call-ups. Between January 2008 and February 2011, 47 City employees have taken 250 military leaves of absence. These 47 City employees have taken an average of thirteen tours during their employment with the City. During this time period, the median tour has lasted five days but there is a huge range of tour lengths – from as little as one day to one on-going tour, most recently estimated at 786 days.

Since 2008, twenty-eight tours have lasted more than thirty days and, thus, qualified for the Program. The table below outlines the three-year and average annual costs of military leaves for the City. Paid military leave, which is required by State law, accounts for almost half of the total cost.

⁴ The new resolution (74180) is the resolution currently in effect. It builds upon the previous resolution 73180. Both resolutions can be seen in Appendix D.

Exhibit I: Overall Military Leave Costs 2008-10

	Three year total	Average annual cost
State-mandated paid military leave	\$540,000	\$154,334
Supplemental salary	\$202,000	\$57,661
Supplemental benefit premiums	\$120,890	\$34,540
Retirement contributions	\$382,898	\$109,400
Total military leave related costs	\$1,245,788	\$355,935

Source: Auditor analysis and Payroll records

Almost 30 percent of reservists participating in the Program since 2008 have not received any supplemental salary. As can be seen in the table below, even for those who have received supplemental salary, fringe benefits far outweigh supplemental pay benefits for most reservists participating in the Program.

Exhibit 2: Selected Reservist Tours – 2008-2010

	Reservist 1	Reservist 2	Reservist 3	Reservist 4	Reservist 5
Days in Tour	436	73	400	170	309
Medical coverage during leave	family	family	single	family	single
Dental coverage during leave	family	family	single	family	single
Paid Military Leave (State mandated)	\$17,134	\$3,650	\$11,435	\$7,355	\$9,592
Insurance premiums paid by City	\$14,609	\$1,735	\$5,615	\$4,681	\$4,880
Employee retirement contributions paid by City	\$16,260	\$1,150	\$8,562	\$4,611	\$7,371
Employer retirement contributions paid by City	\$35,906	\$2,914	\$20,784	\$10,486	\$15,837
Supplemental salary	\$35,509	\$0	\$1,126	\$19,175	\$10,204
Supplemental salary as a percentage of total benefit	30%	0%	2%	41%	21%
Estimated leave value	\$119,418	\$9,450	\$47,522	\$46,309	\$47,884

Source: Auditor analysis and Payroll records

Staffing Impacts

In addition to the cash cost of supplemental pay and benefits, there is the impact of an absent employee. Seventy-two percent (34 of 47) of reservists who took tours during the last 3-1/2 years are employed by the Police Department with the others working in Environmental Services, General Services, Fire, Airport, Information Technology, and Transportation. In 2010, reservists were absent a total of 2,040 days for all military leave time including active and inactive duty, trainings and drills.

Some departments incur overtime costs to cover the work of absent reservists. Other departments are 'running short', or work may just not be done or is delayed until the reservist returns.

The Program Allows Reservists the Opportunity to Earn More Money During Military Leaves of Absence than They Would Have While Working Their City Jobs

As mentioned above, the ongoing nature of the Program has created some unforeseen issues, and, as illustrated below, has created some financial advantages to City employees joining the reserves that were likely not to have been intended by the original Program supporting a national call-up in times of crisis.

When Employees Are on Leaves, the City Makes Both the Employer and Employee Retirement Contributions

Retirement contributions made on behalf of City employees are currently split between the employee and the employer. For fiscal year 2010-11, contribution rates were as follows:

- Federated – employee 10.3 percent of pay, employer 29.59 percent of pay
- Police – employee 15.57 percent of pay, employer 44.58 percent of pay
- Fire – employee 13.7 percent of pay, employer 44.16 percent of pay

However, based on a Police and Fire Retirement Plan Municipal Code section adopted in 1941 and a similar Federated Retirement Plan section adopted at least as far back as 1975, the City currently makes both the employer and employee retirement contributions for reservists who take military leaves of absences from City service. This provision alone renders reservists more than "whole" during military leaves (i.e., net pay would increase because employee retirement contributions were not withheld), and costs the City almost \$8,000 for a typical reservist on a typical tour. This costs approximately \$30,000 per year in increased City retirement contributions.

Given these costs and the fact that reservists are earning military retirement credits at the same time, we suggest changing the Municipal Code such that reservists make the employee contributions towards their retirements if the City continues to provide retirement credit to reservists for their time on military leave.⁵

⁵ The City is not required by State or federal law to do so, however retirement credit has been granted since 1941 and 1975 through Municipal Code provisions (the Police and Fire Retirement Plan section and Federated Retirement Plan section, respectively).

Some Reservists Have Access to Supplemental Military Pay Through the Department of Defense As Well As Through the City

The Department of Defense currently offers differential pay (set to expire at the end of 2011, but which has historically been renewed each year) to reservists earning more money in their civilian jobs than their military positions. This Program, called the Reserve Income Replacement Program (RIRP) was developed to provide specific payments to eligible members of the National Guard and Reserve who are involuntarily serving on active duty (the term “active duty” includes full-time National Guard duty) and who are experiencing a monthly active duty income differential of more than \$50. The Program is more restrictive and less generous than the City’s Program and reservists are only eligible for RIRP pay if they have been involuntarily called to service frequently or for long time periods.⁶

According to the Department of Defense contact person that Payroll works with, no City employees have taken advantage of this Program to date, however, some City reservists are eligible to and the City does not currently restrict them from participating in both the City’s supplemental income Program as well as the RIRP; nor would the City consider RIRP income as part of its calculation of military compensation. Those facts could allow reservists to participate in both Programs and increase their total compensation while serving on tours of duty. It does not seem to be within the spirit of the City’s Program for reservists to receive both military and City supplemental pay and therefore, earn more while on leaves of duty than otherwise would be earned while working at their City jobs.

Full City Pay for Military Leaves Has Been Given in Excess of State Law Requirements

As required by State law, military reservists, who have worked for the City for at least one year, receive their full City pay for the first 30 calendar days of any active duty tour. This is coded as Military Leave (MLT) in the Payroll system. Reservists may only receive this type of pay for a maximum of 30 calendar days in any given fiscal year. So if they are called up on multiple tours in one fiscal year, they would not receive this pay each time.

However, we found that the City has gone beyond this provision and on occasion has paid 30 days of Military Leave for multiple months during tours that spanned more than one fiscal year. For example, if a tour started at the beginning of June and ended the beginning of July (only two months) it would cross two fiscal years and 60 days of MLT would be paid.

⁶ Reservists may qualify for the Program if they have:

- Completed 18 continuous months of service on active duty under involuntary orders;
- Completed 24 cumulative months of involuntary active duty during the previous 60 months beginning on or after August 1, 2001; or
- Served on involuntary active duty for a period of 180 days or more which commenced within six months following their separation from a previous period of involuntary active duty for a period of 180 days or more.

Of the 28 reservists who received MLT pay in 2009-10, two received MLT pay more than once during a tour because of the City's practice to pay MLT at the beginning of each fiscal year for employees out on military leaves. In the two cases, the City paid about \$8,300 and \$8,800 more than required by State law in paid military leave because the tours crossed fiscal years. We suggest that for future military leaves, the City establish clear procedures that only allow for MLT pay in the first 30 days of any military tour not to exceed more than 30 days of pay in any fiscal year – consistent with provisions under California law.

The Program's Purpose Should Be Revisited

The Program was originally intended to help reservists who were involuntarily called to active service in the immediate aftermath of September 11. It was not a reservist benefit so much as a response to national crisis. The Program has evolved over time to allow City employees to serve in two employment capacities at once – as both City employees and military reservists for their entire careers with no financial downside.

The Program's ongoing nature opens the door to dual careers and dual pensions for reservists who wish to join. For example, one reservist has been on military leaves for 4 out of the last 8 years. In a time of major cuts to City staffing and almost 200 fewer Police positions, the City has approximately eight people (typically including six police officers) on military leaves at any given time. The permanent nature of the current Program puts additional pressure on already stretched resources.

The City abides by the Uniformed Services Employment and Reemployment Rights Act (USERRA), which establishes reemployment rights for reservists returning to civilian jobs. However, USERRA time-limits the right to return to a previous position to five years or less of cumulative service in the military while with that particular employer, which we suggest the City incorporate into its own Program. Time limiting eligibility for supplemental benefits would ensure employees receiving compensation from the City provide public benefits to San José's residents.

In addition to considering a time limit to the Program, we suggest that the City Council reconsider other aspects of the Program including continuation of health and retirement benefits, service credits, vacation and sick leave accruals, and determining when the Program will be in effect (e.g., permanent or in response to specific military actions).

Codification Is Needed

Because the Program was not designed to be an ongoing benefit, it was historically provided by a resolution of the City Council. If the City Council intends to provide supplemental military pay and benefits as a permanent City program, we recommend the Program be ordained and codified.

Recommendation #1: We recommend the City Council revisit the purpose of the Supplemental Military Pay and Benefits Program and codify provisions including:

- a. **When will the Program apply? We suggest specifying a threshold for a crisis, such as when X number of reservists are called-up nationwide.**
- b. **How long will supplemental pay and benefits be provided? We also suggest time-limiting participation to five years cumulative military service while employed with the City, which would be consistent with federal veterans' rights requirements. If individual tour benefits were limited to 540 days (roughly 1.5 years), only one of the last 28 long tours would have reached the cut-off point; if the limit were set at 366 days (roughly one year), 7 of the last 28 long tours would be impacted.**
- c. **Will retirement credits accrue, and should vacation and sick leave continue to accrue? We suggest requiring reservists to pay the employee share of contributions to provide parity with other City employees and because they are earning military retirement credit at the same time.**
- d. **Reservists should be obliged to disclose any Department of Defense differential pay (RIRP) that they receive, and the City should offset the City's supplement based on that amount.**
- e. **We also recommend paying MLT only for the first 30 days of a single tour, not more than once per fiscal year as required by State law.**

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Finding II Streamlining Is Possible, But Will Depend on Clarifying the Program's Intent

Summary

If the City Council wishes to continue to offer supplemental pay and benefits as on-going benefits, we recommend the Program be updated and streamlined to minimize administrative burdens and reservist hardships and increase reservist satisfaction with the Program. The current process is cumbersome, involving multiple reconciliations, resulting in high administrative costs and reservist dissatisfaction with the Program. We recommend simplifying the Program to reduce administrative costs and provide more certainty of payment for reservists.

The Current Military Leave Process Involves Multiple Reconciliations

Typically, when an employee takes an active duty military leave of absence they notify their timekeeper who directs them to fill out the City's Leave of Absence form. HR subsequently contacts the employee for copies of leave orders from the military, reviews benefit elections during the leave, obtains employee signatures for the military pay release form, and provides information to the employee of all benefits they are eligible to receive during their leave.

Pay During the Tour

Once an employee starts a military leave, they begin receiving their full City pay in addition to military pay for the first 30 days of their tour, pursuant to State law. If they are still on active duty after 30 days have elapsed, they no longer receive full City pay but, pursuant to Council resolution, can receive a portion of City pay, such that their City supplemental pay combined with military pay equals what they would have received with the City if they were not on leave.

Biweekly Reconciliations

However, because applicable Department of Defense pay documents are not received in time for Payroll to process biweekly payroll, Payroll does not base this supplemental pay on actual military salary data received. Instead, Payroll accountants must estimate what military earnings will be and base payments on these estimates in order to avoid a waiting period for reservists to receive City payments. A few weeks later, when military data is received directly from the Department of Defense (a significant improvement in determining accurate payments which began in late 2007), Payroll manually reconciles the difference

Supplemental Military Pay

between the estimated and the actual pay received and corrects pay in subsequent supplemental payments if necessary. This process repeats every pay period for the duration of the reservist's tour.

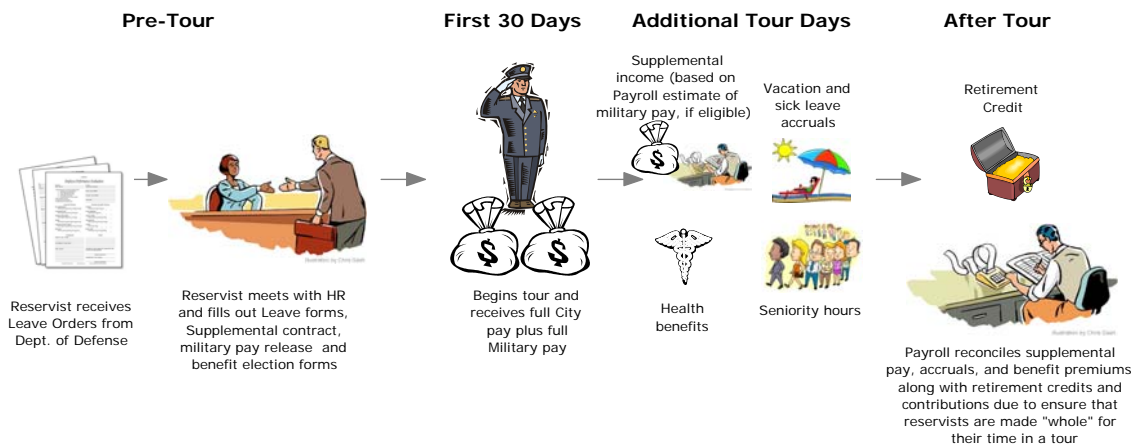
Post-tour Reconciliations

Upon return to City service, Payroll double checks military pay data, supplemental checks issued, and City pay, including any retroactive salary increases that have occurred during leave time to ensure that reservists received exactly what they would have earned if they had not been absent from City service. If reservists were paid too much, HR contacts the reservist to arrange reimbursement back to the City for any overpayments. If they were paid too little, they receive a final supplemental pay check.

In addition, Payroll runs various reports through the payroll system to ensure that vacation, sick leave, and seniority hours all accrued properly for the length of the military leave. Payroll also works with Retirement Services to determine City salary during the leave for pension purposes, retirement credits accrued, and the contributions required for the leave period.

Finally, HR reviews the employee and employer benefit premiums due during a leave and determines what, if any, premiums are owed to the City. The employee's share of those premiums is then deducted from their City paycheck (or series of paychecks, if paid over time).

Exhibit 3: Military Leave Process



Administrative Costs Are High

A combination of factors has led to high administrative costs for the Program: trying to estimate military pay, managing benefits elections, calculating retirement contributions, calculating multiple reconciliations including notifications to reservists, and dealing with newly arising reservist issues. Based on estimates of staff time from HR and Payroll, we estimate that this Program, which distributes

average annual amounts of \$57,000 in supplemental pay, \$100,000 in health benefits, and \$109,000 in retirement contributions, costs roughly \$54,000 per year to administer (HR at approximately \$21,000 and Payroll at about \$33,000 annually) – nearly as much in administrative costs as it distributes in supplemental pay.

In the wake of eliminating 588 City positions, severe cuts to Payroll and HR services, and financial crisis in the City, this is \$54,000 more than the City can afford. If the Program continues, it is critical that processes be streamlined in order to reduce administrative costs.

Neither Staff Nor Reservists Are Satisfied with the Program

For all the cost to the City, and time spent trying to get payments exactly right, many reservists are not satisfied with the Program. We contacted 19 reservists who had recently participated in the Program. Nine reservists provided feedback. Three were satisfied with the Program and felt their deployments and returns were fairly smooth; however, the other six were rather unsatisfied with the Program. There was a sense of mistrust of City staff, especially caused by a fear that the City would give supplemental pay checks only to come back at some point in the future and request reimbursement.

Other issues included resentment that the City did not prepare reservists for the full gambit of financial issues that can arise from an extended leave from home, concerns about medical benefit management (issues that have subsequently been streamlined), frustration that the Program does not cover inactive duty training and drills,⁷ and confusion about how the City determines salary on both the City and military sides.⁸

The City's Efforts to Minimize Hardship Caused Inaccurate Payments to Reservists

The City Council and City Administration have modified the supplemental Program many times over the past decade in an attempt to make it as easy as possible for military reservists to take leaves of absence from their City jobs during a national mobilization. Initially, City Council made very clear that they wanted to ensure that the reservists and their families felt no financial pain from their military tours, but the City also did not want reservists to gain financially from taking tours, so they determined that reservists should receive exactly as much in City and military income as they would have received in City income alone – and no more.

⁷ State law provides that local public agencies are not required to provide paid leave for inactive duty training.

⁸ The determination of types of pay to be used in calculating City and military salaries has been reviewed extensively by the City Manager's Office, with input from reservists. The most recent review occurred in 2007 when the military pay list attached in Appendix C was created.

The City believed it would be better to err on the side of overpaying reservists during tours and then seeking reimbursement for the overpayments once employees were back working with the City. As a result of this initial assumption, the Program commenced by automatically paying reservists 50 percent of their City salaries regardless of how much supplemental pay they actually qualified for. Reservists were asked to provide military paystubs to the City as quickly as possible so that Payroll could adjust supplemental checks and minimize overpayments. According to Payroll, they often did not receive paystubs for many months so that when paystubs did come in, reservists owed significant amounts back to the City.

This initial payment process left both sides (City and reservists) unsatisfied, so by 2004, the City adjusted this practice to paying reservists 25 percent of their City salary as an estimate of the correct supplemental pay. The City's procedures stated that if reservists failed to provide paystubs in the first 90 days of receiving supplemental pay, the City would stop sending supplemental checks. However, the practice was to continue sending checks under the premise that it may be a real hardship to provide paystubs to the City for some reservists, and the City did not want to penalize reservists who really needed the City supplement and could not easily communicate with City staff while on tour. However, as one can imagine, this one size fits all approach caused many overpayments and administrative challenges.

In 2005, the City tried to increase the accuracy of estimated supplemental payments by switching from making automatic 25 percent supplemental payments to determining supplemental payments on a Payroll estimate of military pay based on:

- Employee's rank in the military
- Employee's years of service in the military
- Employee's permanent zip code
- Employee's number of dependents

These changes made payments more accurate but still were not based on actual salary data, so over and underpayments were still common.

In 2006, several City Councilmembers brought a large overpayment (\$52,000 for 34 months of overpayments) to the attention of the full City Council as the problems facing the Program became very apparent. In 2007, the Santa Clara County Civil Grand Jury released a report criticizing the Program for allowing such large overpayments to reservists.

Later in 2007, the City began collecting Earnings Statements directly from the Department of Defense from reservists who agreed to authorize their release, which meant that the City could receive military salary information relatively

quickly and no longer needed to rely on reservists to supply paystubs. Currently, nearly all reservists provide the release of Earnings Statements for the City to calculate supplemental payments which has greatly increased the accuracy of payments and the timeliness of reconciliations, but it is still not perfect.

Reservists Want Certainty

For almost ten years, the City has offered a Supplemental Pay Program to reservists based on estimated military pay information, which often causes over or underpayments of supplemental pay. As discussed above, paying reservists based on estimates led to large over and underpayments, ranging from more than \$9,000 underpaid to over \$52,000 overpaid for a tour.

From our meetings with reservists, this is the major cause of dissatisfaction with the Program. Reservists want to be secure knowing that all the money flowing into their accounts is theirs to keep. The City's policy of paying based on estimates and then recouping any overpayments leaves some reservists feeling unsettled and insecure even when they do not end up owing the City.

As described below, we suggest basing supplemental pay on actual pay so that reservists can be comfortable knowing that the money is theirs. Furthermore, the flat rate pay outlined below should increase reservist satisfaction with the Program as reservists would receive a steady and predictable stream of payments that would not be subject to any recall.

Supplemental Pay Rates Should Be Based on Actuals, Not Estimates

Reservists typically receive the first month of their tour paid under the City's MLT program – carrying them over until their first military paycheck arrives. If the City waited three to five weeks to pay reservists their first supplemental paycheck – until actual income statements became available from the Department of Defense's Finance Department (DFAS) – the City could avoid making estimates and thus send out accurate supplemental payments.

Supplemental Pay Rates Should Be Based on City Salary in the Month Prior to a Military Leave

Payroll spends a lot of time ensuring that reservists ultimately receive the exact income that they would have received if they had not left for active military duty. To do this, Payroll needs to frequently check automatic pay rate changes including retroactive pay changes as well as premium pay changes, which is a tedious manual process. Many pay changes are applied retroactively, both for military as well as City salaries. In some cases, reservists have numerous, compounding retroactive salary changes throughout and after returning from tours. Thus the need for the bi-weekly and post-tour reconciliations described above.

On the other hand, if the process and intent of the Program were changed to provide reservists with **at least as much income as they received in the month prior to a tour**, it would save a lot of administrative time, although it would not provide them with the **exact** income. Likewise, if the process were changed to base the comparison military salary on the salary that reservists receive in their first month on a tour, a fixed supplemental salary rate could be established as described below.

Simplifying Supplemental Pay Calculations by Establishing a Flat Rate Early in the Tour

Payroll currently spends a lot of time ensuring that reservists are paid exactly what they would have earned if they had not taken a tour.⁹ This process could be simplified if Payroll were authorized to compare the actual amounts earned in the month prior to a leave of absence to the actual military pay earned during the first month of a tour, to establish the monthly supplemental pay amount that would be paid to reservists each month until their return from leave. This would provide a flat rate supplemental benefit.

Implementation of this approach would mean that reservists' supplemental checks would not increase if City raises take effect during their tours, but it also would not decrease supplemental checks if military raises occur during a leave or in cases where City pay decreases. Reservists would receive any raises due immediately upon their return to City service as provided under USERRA.

In the five tours we reviewed, three reservists would have earned more in our scenario, one would have earned less, and one would have had no change. These differences would have been reduced if pay were reexamined after 90 days in a tour.

Establish Minimum Benefit Amount

Given the administrative burden, it may also be worth offering this Program only if reservists would receive at least \$50 per month through the Program, which is the same threshold used by the Department of Defense in their civilian pay differential Program.

Administrative Cost Savings

We expect that these changes would reduce Finance Department costs (in terms of staff time) from roughly \$33,000 per year to less than \$10,000, as the bulk of Payroll time devoted to this Program appears to be spent on reconciling City to

⁹ We reviewed 5 of the 28 most recent tours and found two small errors in Payroll calculations, but nothing significant enough in our opinion as auditors to call the process into question or worth retroactively adjusting for reservists. In both cases, the errors were slightly in the favor of the employee. Overall, we found Payroll's processes accurate, but time consuming and confusing for laypersons.

military pays and adjusting for (often numerous) retroactive changes to both military and City pays, which would no longer need to occur. This would free Payroll staff, whose ranks have been reduced, to focus on other concerns.

Improved Communications Between the City and Reservists

As discussed earlier, communications between reservists and the City have not been especially smooth. In our opinion, processing paperwork and reviewing benefits early would help, as would simplifying written contracts and establishing a liaison.

Process Paperwork Early

Rather than waiting until reservists receive military orders, Human Resources could better manage the Program if military pay release forms and reservist status forms were completed ahead of time, perhaps in coordination with HR's outside employment form and/or the Police Department's Secondary Employment Program that also tracks outside employment. This would help administrators keep track of reservists (the City does not currently have a count of how many reservists it has on staff) and better allow City staff to keep reservists apprised of programmatic changes or other useful information as well. This would allow discussion of the supplemental military benefits prior to being called up.

Simplify Written Contracts

Reservists are required to sign a three-page written contract with the City prior to a military leave. The contract includes provisions agreeing to repay any overpayments reservists may receive, outlines an outdated supplemental pay process, and does not speak to other aspects of the benefits Program. The City Attorney's Office is currently reviewing the contents of the agreement. At least one reservist has disputed the length and format of the contract, and the Attorney's Office believes it can be simplified.

Establish Military Liaison(s)

Depending on how the Program is structured, and by how much it is simplified, we believe it would be helpful for the City to have a liaison to respond to all the different types of issues that may come up with reservists while they are away – not just City pay and benefits.

Recommendation #2: We recommend the Administration

- a. **Update the Supplemental Military Leave Policy establishing that the supplemental payment shall be a fixed monthly amount – the difference between regular earnings in the month prior to deployment and the military pay on the first full month of a tour, with a one-time adjustment after 90 days and no further modifications.¹⁰**
- b. **Simplify the military leave contract and consider which aspects of the Program require signed commitments.**
- c. **Consider incorporating reserve status and military income release forms into HR's Outside Employment and the Police Department's Secondary Employment forms and policies as a way of streamlining documentation and management.**
- d. **Consider appointing a reservist liaison(s) to promote better communication regarding benefits and upcoming military leaves, and to maintain contact with reservists on tour.**
- e. **Prepare written procedures for calculating supplemental pays, leave accruals, seniority hours, and benefits management.**

¹⁰ Pays included in both military and City salaries are detailed in Appendices B and C.

Conclusion

Since 2001, and during previous shorter national mobilizations, the City has offered supplemental pay and benefits for employees serving active tours of duty as reservists. The Program has become administratively burdensome and the purpose has evolved over time from a response to national crisis to an employee benefit that allow City employees to serve in two employment capacities at once – as both City employees and military reservists for their entire careers. We recommend the following in order to clarify the purpose and administration of the Program.

RECOMMENDATIONS

Recommendation #1: We recommend the City Council revisit the purpose of the Supplemental Military Pay and Benefits Program and codify provisions including:

- a. When will the Program apply? We suggest specifying a threshold for a crisis, such as when X number of reservists are called-up nationwide.
- b. How long will supplemental pay and benefits be provided? We also suggest time-limiting participation to five years cumulative military service while employed with the City, which would be consistent with federal veterans' rights requirements. If individual tour benefits were limited to 540 days (roughly 1.5 years), only one of the last 28 long tours would have reached the cut-off point; if the limit were set at 366 days (roughly one year), 7 of the last 28 long tours would be impacted.
- c. Will retirement credits accrue, and should vacation and sick leave continue to accrue? We suggest requiring reservists to pay the employee share of contributions to provide parity with other City employees and because they are earning military retirement credit at the same time.
- d. Reservists should be obliged to disclose any Department of Defense differential pay (RIRP) that they receive, and the City should offset the City's supplement based on that amount.
- e. We also recommend paying MLT only for the first 30 days of a single tour, not more than once per fiscal year as required by State law.

Recommendation #2: We recommend the Administration:

- a. Update the Supplemental Military Leave Policy establishing that the supplemental payment shall be a fixed monthly amount – the difference between regular earnings in the month prior to deployment and the military pay on the first full month of a tour, with a one-time adjustment after 90 days and no further modifications.¹¹

¹¹ Pays included in both military and City salaries are detailed in Appendices B and C.

Supplemental Military Pay

- b. Simplify the military leave contract and consider which aspects of the Program require signed commitments.
- c. Consider incorporating reserve status and military income release forms into HR's Outside Employment and the Police Department's Secondary Employment forms and policies as a way of streamlining documentation and management.
- d. Consider appointing a reservist liaison(s) to promote better communication regarding benefits and upcoming military leaves, and to maintain contact with reservists on tour.
- e. Prepare written procedures for calculating supplemental pays, leave accruals, seniority hours, and benefits management.

APPENDIX A

Laws And Regulations

The City's military leave policies are governed by Council Resolution, Municipal Code Ordinances, and State and federal law.

Federal law, the Uniformed Services Employment And Reemployment Rights Act (USERRA), states that veterans have the right to be reemployed in their civilian job if they leave that job to perform service in the uniformed service and:

- they ensure that the employer receives advance written or verbal notice of their service
- they have five years or less of cumulative service in the uniformed services while with that particular employer
- they return to work or apply for reemployment in a timely manner after conclusion of service
- they have not been separated from service with a disqualifying discharge or under other than honorable conditions

If these criteria are met, then veterans have the right to be restored to their former civilian jobs with the same benefits they would have attained if they had not been absent due to military service. USERRA also provides veterans with the right to retain employer-sponsored health insurance for up to 24 months and to be reinstated in employer-sponsored health insurance without any waiting period and generally without any exclusions.

State law, California Military and Veterans Code section 389-398, provides that:

- Any local agency public employee who is a reservist and has been employed by their current employer for at least one year is entitled to a *temporary* (180 days or less) military leave of absence while engaged in military duty ordered for purposes of active military training, encampment, naval cruises, special exercises or like activity.
- The employee has an absolute right to be restored to the former position and status formerly had by him or her upon the termination of *temporary* military duty.
- Any public employee who has been in the service of the public agency from which the leave is taken for a period of not less than one year immediately prior to the date upon which a *temporary* military leave of absence begins, shall receive the same vacation, sick leave, and holiday privileges and the same rights and privileges to promotion, continuance in office, employment, reappointment to office, or reemployment that the employee would have enjoyed had he or she not been absent therefrom.¹ Local agencies may but are not required to provide paid military leave for inactive duty training.

¹ Excepting that an uncompleted probationary period, if any, in the public agency, must be completed upon reinstatement as provided by law or rule of the agency. For the purposes of this section, in determining the one year of service in a public agency all service of the employee in recognized military service shall be counted as public agency service.

- Any local agency public employee who is on military leave of absence (*of any length*) for military duty ordered for purposes of active military training, encampment, naval cruises, special exercises, or like activity, and who has been in the service of the public agency from which the leave is taken for a period of not less than one year immediately prior to the day on which the absence begins, is entitled to receive his or her salary or compensation as a public employee for the first 30 calendar days of any such absence. Pay for those purposes may not exceed 30 days in any one fiscal year. For the purposes of this section, in determining the one year of public agency service, all service of a public employee in the recognized military service shall be counted as public agency service.

The City's Municipal Code has provided that reservists are entitled to receive retirement credit during military leaves of absence. **Police and Fire Retirement Code** (at least since December 1941) section 3.36.620 states that if reservists:

- Are released, separated or discharged under conditions other than dishonorable
- Returns to City service within three months after termination of his active service with the armed forces, and not later than six months after the end of the war or national emergency
- Were members of this retirement system at the time they left the above-mentioned City office or position to join said armed forces
- They were not entitled to receive full compensation from the City during his said absence

Then the City shall contribute to the retirement fund an amount of money equal to the amount of all contributions which City and said person would have had to pay into said fund if said person had not been so absent. No moneys contributed or paid by City pursuant to this section shall be deemed to be contributions or accumulated contributions of said person, and in no event shall said employee ever be entitled to all or any part of them upon withdrawing his accumulated contributions.

Federated Retirement Code (at least since 1975) section 3.28.630, provides that while he or she is a member of this system, and while on leave of absence to engage in military service, a member of this system renders military service of the United States, and if, in addition, said member returns to federated City service after discharge under conditions other than dishonorable within six months after such discharge or within six months after any period of rehabilitation afforded by the United States government, including a period of rehabilitation for purely educational purposes, the City shall contribute to this system on behalf of such member such amounts of contribution which would have been payable by said member, together with such additional amounts as would have been payable by the City, on the basis of compensation earnable at the commencement of said member's absence plus the annual salary adjustments which he or she would have received if said member had remained in federated City service and had not left for said military service.

In addition to the above requirements, the City has adopted **resolutions (74180 and 73180)** that provide that the City will provide supplemental pay including supplemental salary, health, dental, life insurance premiums, and retirement contributions for employees who are members of the military reserves or National Guard and who are called to active military duty related to terrorist attacks or impending or actual armed conflict. This supplemental pay is intended to provide for the differential between City compensation and active military duty compensation. Vacation and sick leave shall be accrued during the first twenty-six pay periods. Employees are required to:

- Return to City employment within 60 days after the end of active duty status if not incapacitated as a result of being wounded or injured in action
- Remain as active employees for at least six months following their return to City employment; and
- Sign an agreement which specifies and provides for supplemental salary and benefits in consideration for promising to return to City service after release from active military duty during the call to duty and promising to repay City of such supplemental benefits if the reservist does not return to City service in accordance with the City's Program.

APPENDIX B City Pay Codes

City Pay Codes included in determining City salary for supplemental income purposes:

ADA	Administrative Assignment
ATI	Firefighter Anti-Terrorism Training Pay
ATT	Anti-Terrorism Training Pay
BL1	Bilingual Pay Full Time
BL2	Bilingual Pay Part Time
BL3	MEF Bilingual Pay Part time Unbenefitted
BLF	Oral Bilingual Pay Full Time
BLP	Oral Bilingual Pay Part Time
BMB	Bomb Pay
DOG	Canine Unit Premium
DST	Police Data Specialist Training Pay
EDT	Education & Training Pay
EMT	Emergency Medical Technician
HIL	Holiday In-Lieu Pay
HTP	Hazardous Incidents Team (Relief)
HTR	Hazardous Incidents Team (Regular)
LIC	Class A/B License Pay
MGE	MERGE Unit Pay
MTR	Motorcycle Duty Pay
N01	Bi-weekly Notary Pay
NOT	Notary Fee
OWF	Oral/Written Bilingual Full Time
OWP	Oral/Written Bilingual Part Time
PAI	MEF Professional Achievement Incentive
PAR	Paramedic Pay (Regular)
PPA	Post Pay Advanced
PPI	Post Pay Intermediate
PRN	Paramedic - Support (5%)
PRS	Paramedic Pay - Support (8%)
SH2	Shift Premium \$1.50
SH3	IBEW Shift Premium - \$1.55
SH4	IBEW Graveyard Shift Premium \$1.75
SHF	Shift Premium \$1.20
SHG	Shift Differential Graveyard \$1.75
SHR	Graveyard Shift Premium - \$1.60
SHW	Shift Premium - \$1.40
TRD	Dispatchers Training Pay
TRN	Police Field Training Pay
USP	Urban Search & Rescue (Relief)
USR	Urban Search & Rescue (Regular)

**APPENDIX C
Military Pay Codes**

Military Pay Codes included in determining military salary for supplemental income purposes:

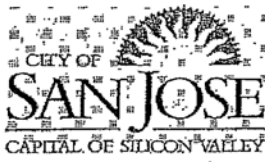


Human Resources Department

CHART OF MILITARY PAYS		
Military Pay Types	Description of Allowance	Reconciliation Guideline
Basic Pay	Based on reservist's rank and years of service. (Compensation)	Always included in computation after January 1 of 2003.
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)	Always included in computation.
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.	Always included in computation after January 1 of 2003.
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.	Always included in computation unless reservists provides documentation to specify non-reimbursable 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)	Always excluded from computation after January 1, 2005.



Military Pay Types	Description of Allowance	Reconciliation Guideline
Family Separation Allowance (FSA of FSH) – Type I	FSA type I is intended to pay for added housing expenses resulting from separation of a reservist for their dependents, and is only payable when the reservist is on permanent duty in Alaska or outside of the United States. (Reimbursement)	Included in computation prior to January 1, 2005. After January 1, 2005 excluded from computation.
Family Separation Allowance (FSA - Type II)	FSA Type II is intended to provide compensation for added expenses incurred because of a family separation and is payable in instances in which the reservist is separated from their family for more than thirty (30) days. (Reimbursement)	Included in computation prior to January 1, 2005. After January 1, 2005 excluded from computation.
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)	Always excluded from computation.
SPECIAL PAYS		
Flight Pay, Diving Pay, Sea Pay, Submarine Duty Pay	Designed to compensate service members in certain missions with certain skills and to retain them in the military. (Compensation)	Always included in computation.
Imminent Danger Pay (IDP)	IDP recognizes through additional compensation service members who are subject to the threat.	Always included in computation.
Hardship Duty Pay for Location (HDP-L)	Paid in recognition of the extraordinarily arduous living conditions, excessive physical hardship, and/or unhealthful conditions that exist in the area. (Compensation)	Always included in computation.



Military Pay Types	Description of Allowance	Reconciliation Guideline
Hazardous Duty Incentive Pay (HDIP)	Paid to reservists for certain assignments including demolition work, flight duty, and exposure to certain toxic items and parachuting. (Compensation)	Always included in computation.
Conus Cola (COLA)	The Cost-of-Living Allowance or COLA is an allowance paid to service members stationed in high-cost areas overseas (including Alaska and Hawaii). COLA helps maintain purchasing power so you can purchase about the same goods and services overseas as in the United States.	Always included in computation.
Combat SGLI, TSGLI	The Combat Servicemember's Group Life Insurance allowance may be a one-time entitlement (single month only) or a continuous entitlement (duration of deployment). The allowance is equal to the monthly cost of \$150,000 SGLI coverage plus the cost of Traumatic SGLI coverage.	Always excluded from computation.

**APPENDIX D:
Resolution No. 73180 And 74180**

Supplemental military pay Program resolutions which are currently in effect:

RD:NS
May 23, 2006

Res. No. 73180

RESOLUTION NO. 73180

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSÉ APPROVING THE EXTENSION OF THE ENHANCED MILITARY LEAVE PROGRAM TO CITY EMPLOYEES WHO ARE CALLED TO ACTIVE DUTY DURING THE PERIOD FROM JANUARY 1, 2003 TO DECEMBER 31, 2007 FOR REASONS RELATED TO TERRORIST ATTACKS OR IMPENDING OR ACTUAL ARMED CONFLICT

WHEREAS, the City Council of the City of San Jose recognizes that certain City employees who are members of the military reserves or National Guard have been called to active military duty with the possibility that additional City employees will also be called to such duty related to terrorist attacks or impending or actual armed conflict; and

WHEREAS, such City employees who serve on active military duty because of the call to duty are paid their full City salary and benefits for the first thirty days of such service and thereafter such salary and most City benefits are not provided while on active military service; and

WHEREAS, the City Council desires to extend 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.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1.

The City Council of the City of San Jose hereby approves payment of supplemental compensation after the mandatory Thirty (30) day benefit period to City employees who are members of the military reserves or National Guard and who are called to active military duty related to the 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. Such compensation shall include supplemental salary, health, dental, life insurance premiums, and retirement contributions for employees who become eligible during the period from January 1, 2003 to December 31, 2007. Such supplemental compensation shall be provided for the entire time of active duty including such active duty which may extend beyond 26 pay periods and is intended to provide for the differential between City compensation and active military duty compensation. Vacation and sick leave shall be accrued during the twenty-six pay periods.

SECTION 2.

Such supplemental benefits shall be available to City employees who:

- a. Are members of the reserves and/or National Guard ; and
- b. Are current and active employees of the City of San Jose;
- c. Are called to active duty related to the 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; and
- d. Return to City employment within 60 days after the end of active duty status if not incapacitated as a result of being wounded or injured in action; and

- e. Remain as active employees for at least six months following their return to City employment; and
- f. Sign an agreement which specifies and provides for supplemental salary and benefits in consideration for promising to return to City service after release from active military duty during the call to duty.

SECTION 3.

The City Manager or his designee is hereby authorized to execute agreements between the City and eligible employees which set out and provide for supplemental compensation for consideration that such eligible employees return to City employment. Such agreements shall include provisions for repayment of such supplementary benefits for those employees who do not return to City employment in accordance with SECTION 2, above.

SECTION 4.

The payment of supplemental compensation and benefits in accordance with this Resolution to an employee in a recognized employee organization is contingent on agreement by the employee bargaining representative of such employee organization.

SECTION 5.

The Memorandum from the Director of Employee Relations dated May 8, 2006, recommending the compensation and benefits for eligible City employees/military reservists is attached to this Resolution as Attachment A and incorporated by this Resolution.

ADOPTED this 23rd day of May, 2006, by the following vote:

AYES: CAMPOS, CHAVEZ, CHIRCO, CORTESE, LeZOTTE,
NGUYEN, PYLE, REED, WILLIAMS, YEAGER,
GONZALES

NOES: NONE

ABSENT: NONE

DISQUALIFIED: NONE

RON GONZALES
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

RESOLUTION NO. 74180

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE EXTENDING THE PROVISIONS OF THE ENHANCED MILITARY LEAVE PROGRAM FOR EMPLOYEES CALLED TO ACTIVE DUTY APPROVED BY RESOLUTION NO. 73180

WHEREAS, the City Council of the City of San Jose recognizes that certain City employees who are members of the military reserves or National Guard have been called to active military duty with the possibility that additional City employees will also be called to such duty related to terrorist attacks or impending or actual armed conflict; and

WHEREAS, such City employees who serve on active military duty because of the call to duty are paid their full City salary and benefits for the first thirty days of such service and thereafter such salary and most City benefits are not provided while on active military service; and

WHEREAS, the City Council desires to extend the Enhanced Military Leave program to City employees who are called to active military duty from and after January 1, 2008.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

SECTION 1.

The City Council of the City of San Jose hereby approves to extend the provisions of the Enhanced Military Leave Program provided under Resolution No. 73180 to enable the City to continue to provide supplemental pay and benefits to employees who are military reservists and who are called to active duty.

SECTION 2.

The City Manager or her designee is hereby authorized to execute agreements between the City and eligible employees which set out and provide for supplemental compensation for consideration that such eligible employees return to City employment. Such agreements shall include provisions for repayment of such supplementary benefits for those employees who do not return to City employment in accordance with the Program.

SECTION 3.

The payment of supplemental compensation and benefits in accordance with Resolution 73180 and this Resolution to an employee is a recognized employee organization is contingent on agreement by the employee's bargaining representative of such employee organization.

SECTION 4.

The Memorandum from the Director of Human Resources and the Director of Finance dated November 26, 2007 recommending extension of the Enhanced Military Leave Program is attached to this Resolution as Attachment A.

ADOPTED this 18th day of December, 2007, by the following vote:

AYES: CAMPOS, CHU, CONSTANT, CORTESE, LICCARDO,
NGUYEN, OLIVERIO, PYLE, WILLIAMS; REED

NOES: NONE

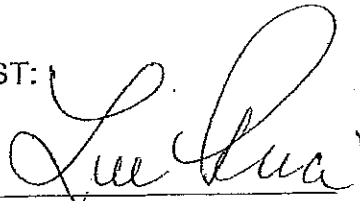
ABSENT: CHIRCO

DISQUALIFIED: NONE



CHUCK REED
Mayor

ATTEST:



LEE PRICE, MMC
City Clerk

Memorandum

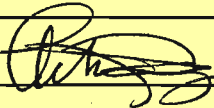
TO: Sharon Erickson
City Auditor

FROM: Alex Gurza

**SUBJECT: RESPONSE TO THE AUDIT
OF "SUPPLEMENTAL MILITARY
PAY AND BENEFITS: REEXAMINATION
AND SIMPLIFICATION ARE NEEDED"**

DATE: June 8, 2011

Approved



Date

6/8/11

The Administration has reviewed the Audit of Supplemental Military Pay and Benefits, and is in general agreement with the recommendations identified in the report. Given the dwindling resources of the City, the City is in general agreement that clarity regarding the Military Leave program's purpose and parameters, and streamlining its application to improve its efficiency and predictability, would be beneficial for both the City and its employees.

As mentioned in the Audit, the original intent of the program was to avoid having Reservist City employees experience any undue financial hardship as a result of being called to military duty in response to specific national events, such as the Kosovo Conflict and the War on Terror. The program has slowly evolved into allowing individuals to concurrently receive pay and benefits as City employees while allowing an individual to maintain a military career with no time limit. While admirable, this evolution is counter to the program's original intent of making a City employee whole during the time they were called to active military duty for specific national events, and was not meant as a supplement to a military career. The Audit also points out that a majority of employees who are currently serving in the military are Police Officers, and the City's fiscal circumstances have created an increased need on having Police Officers available for duty with the City and keeping its citizens safe.

The Administration is in general agreement that the program should be reexamined to minimize the strain on City resources, its employees, and its citizens. The Administration recommends continuing the program, but its parameters should be codified and narrowly tailored to match the program's initial intent and to comply more closely with Federal and State laws, including any applicable time limits for participation in the City's program. Doing so would create efficiency and predictability for both the City and those admirable employees who are called to military duty.

The City Manager's Office thanks the City Auditor's Office for its comprehensive and informative review of the Supplemental Military Pay and Benefits program.



Alex Gurza
Director of Employee Relations