

RESOLUTION NUMBER R- 311312
DATE OF FINAL PASSAGE SEP 20 2017

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO ESTABLISHING PAID MILITARY LEAVE FOR
INACTIVE DUTY TRAINING FOR UNREPRESENTED
EMPLOYEES UNDER SPECIFIED CONDITIONS

WHEREAS, the San Diego City Council (Council) approved the Fiscal Year 2018 Salary Ordinance by San Diego Ordinance O-20817 (April 25, 2017); and

WHEREAS, Section 20 of the Fiscal Year 2018 Salary Ordinance provides, in part, that the Council may, upon the Mayor's recommendation, establish additional benefit programs for unrepresented officers and employees of the City of San Diego (City) by separate and specific Council action, which sets forth the requirements for the benefit programs; and

WHEREAS, the Mayor is recommending that the City's unrepresented employees, regardless of classification, but excluding elected officers, be afforded paid military leave for inactive duty training, which is commonly known as weekend drills, on conditions that are consistent with the paid military leave benefit afforded represented employees; and

WHEREAS, military leave and reinstatement rights are governed by the federal Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), at 38 U.S.C. §§ 4301 through 4355, the California Military and Veterans Code, and local legislative action; and

WHEREAS, federal and state laws prohibit discrimination and retaliation against individuals because of their military service or membership and provide specified reinstatement

rights after employees are absent for military service. Federal law does not require an employer to provide salary and compensation to an employee on active duty; and

WHEREAS, the California Military and Veterans Code, at section 395.02 provides, that certain public agency employees on active duty leave are entitled to receive salary or compensation for the first 30 calendar days while engaged in the performance of ordered military duty. California Military and Veterans Code section 395(b) makes it discretionary for a local public agency to provide paid military leaves of absence for periods of inactive duty training; and

WHEREAS, therefore, the Council must authorize paid military leave for employees participating in inactive duty training; and

WHEREAS, the City's Military Leave Policy, set forth in Civil Service Rule X, section 7, codified at San Diego Municipal Code section 23.1107, incorporates state law. The Civil Service Rule states that City officers or employees who are also members of the armed services or organized reserves are entitled to the leaves of absence and employment rights and privileges provided by state law. City officers and employees who have worked for the City for not less than one year of regular City employment "shall receive their regular City compensation during the military leave, not to exceed a period of 30 calendar days in any fiscal year." The Civil Service Rule, approved by the Council, is silent on whether paid military leave includes inactive duty training; and

WHEREAS, the Council wishes to accept the Mayor's recommendation and provide paid military leaves of absence for unrepresented employees, excluding elected officers, for periods of inactive duty training with specified requirements set forth in this Resolution; and

WHEREAS, the City has complied with San Diego Charter section 70.2 by obtaining the required actuarial analysis from the San Diego City Employees' Retirement System and making it available to the public ten days prior to this Council action; NOW, THEREFORE,

BE IT RESOLVED by the Council of the City of San Diego, in accordance with Section 20 of the Fiscal Year 2018 Salary Ordinance and consistent with San Diego Municipal Code section 23.1107, that the Council authorizes paid military leave for inactive duty training for unrepresented employees, including classified and unclassified employees, but excluding elected officers, as follows:

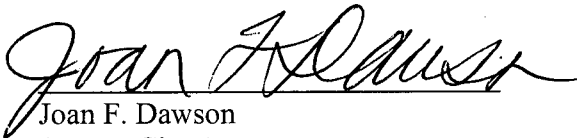
1. Unrepresented City employees, who are also members of the armed services or militia or organized reserves of this State or Nation, specifically the Armed Forces, the Army National Guard, and the Air National Guard, when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency, are entitled to the leaves of absence from City employment and the employment rights and privileges provided by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), codified at 38 U.S.C. sections 4301 through 4335, and as amended in the future. These employees are also entitled to the leaves of absence from City employment and the employment rights and privileges provided by the California Military and Veterans Code.
2. Employees, as defined in this Resolution, who have been regularly employed by the City for one year or more immediately prior to the beginning of the requested military leave and who must be absent from City employment to participate in

their military duties, including inactive duty training, will receive their regular City compensation during the military leave, not to exceed a period of 30 calendar days in any fiscal year. Calendar days must be computed consistently for unrepresented employees, regardless of classification.

3. Employees entitled to this benefit must give no less than 21 days of written notice to their supervisors prior to the start of the requested military leave, unless there are exceptional circumstances beyond the control of the employee originating from the employee's military unit. If exceptional circumstances occur, employees must provide reasonable written notice.
4. Employees may use annual leave, compensatory time, or special leave without pay, in addition to the military leave set forth in this Resolution to provide military service.

BE IT FURTHER RESOLVED that the Council intends this Resolution to be consistent with applicable federal and state law, and, if this Resolution is in conflict with any applicable federal or state law in any part, then the federal or state law that is binding on the City as a public agency employer will control.

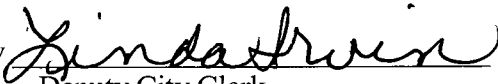
APPROVED: MARA W. ELLIOTT, City Attorney

By 
Joan F. Dawson
Deputy City Attorney

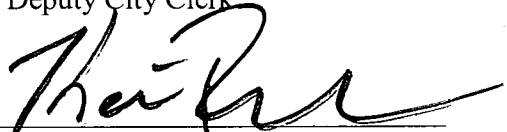
JFD:jdf
08/25/17
Or.Dept: Labor Relations
Doc. No.: 1567447

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of SEP 12 2017.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 9/19/17
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

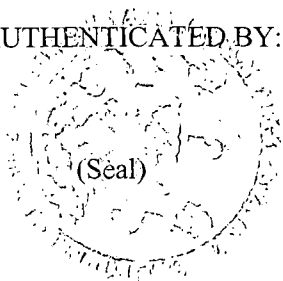
Passed by the Council of The City of San Diego on SEP 12 2017, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gomez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage SEP 20 2017

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:



KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By *Elizabeth Maland*, Deputy

Office of the City Clerk, San Diego, California

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