

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

0410-04984-0000

Date: February 13, 2007

To: The Personnel Committee

From: Karen L. Sisson, Acting City Administrative Officer *KLS*

Subject: **MILITARY LEAVE ORDINANCE**

The Chair of the Personnel Committee requested a report and an ordinance providing authority to pay the salary differential for employees on military leave from the 31st day, whenever the military salary is less than the City salary.

Background

The California Military and Veterans Code Section 395(d) requires full payment of salary for the first 30 days of military leaves of absence for any public employee with one year of service, which includes recognized military service. In the past, when events required calling up of reserve military forces such as the terrorist attacks of 9/11, Hurricane Katrina, or the tsunami in Southeast Asia, the City Council approved payment of the salary differential from the 31st day of service for each event, by separate motion. In doing so, the City Council made specific findings relative to the attendant circumstances to justify the expenditure of public funds in each situation.

In the past three years, the City has spent nearly \$10 million on military leave salary benefits as follows:

2006 - \$2,069,000 to 327 employees for 95,000 hours;
2005 - \$2,590,000 to 346 employees for 132,000 hours; and
2004 - \$5,134,000 to 405 employees for 215,000 hours.

Discussion

A blanket ordinance granting this salary differential whenever an employee is on military leave will create a loss of control for future monetary allotments and may be vulnerable to legal challenge. It would also be subject to abuse and potentially undermine the City's efforts to recruit and retain police officers.

Previous ordinances granted the salary differential based on specific facts and circumstances, such as 9/11, Hurricane Katrina, or the tsunami in Southeast Asia. Consideration by City Council of specific facts as events occur provides a forum for public input each time public monies are to be spent to support a new military endeavor. The findings

made in support of each event-specific salary differential ordinance provide justification for the expenditure of public funds. Absent consideration and findings by City Council relative to a specific set of factual circumstances, a blanket military leave ordinance could be challenged on the grounds that public funds are being spent without proper oversight or justification in violation of the California Constitution. The inability to determine or even project the potential future liability to the City from such a blanket ordinance would further support such a claim.

There is also a potential for abuse if a blanket ordinance is enacted. An employee could "double dip" by earning salary, benefits, and time credited to retirement in the City and the military concurrently. A blanket ordinance could potentially allow an individual with the requisite military time to be hired by the City, enlist in the reserves, and be eligible for the salary differential without ever having worked for the City. Although the Uniformed Service Employment and Reemployment Rights Act of 1994 (USERRA) has a five year time limit for military time served, certain assignments, such as at Operation Iraqi Freedom, are not subject to those limits.

A blanket ordinance could provide an incentive for more Police Officers to take a military leave contrary to the efforts to increase our police force. The City has committed significant funds to the recruitment, training, and retention of Police Officers. There has already been a significant negative impact on the Police Department, with almost 60% of all City employees activated for military duty coming from that department. (See attached breakdown, by Department, of those employees called up during the last three years.) A blanket ordinance would exacerbate this drain on resources.

The potential fiscal impact of a blanket ordinance could be limited by restricting eligibility for the salary differential to only those employees who are involuntarily activated. Federal law does not distinguish between voluntary and involuntary service. (USERRA defines "service in the uniformed services" as "all categories of military training and service, including duty performed on a voluntary or involuntary basis, in time of peace or war". USERRA prohibits discrimination because of military service, provides employment rights, and protects re-employment after military absences.) City ordinances authorizing a salary differential provide greater benefits than required under USERRA. The City Attorney has opined that benefits over and above those required under USERRA would not be subject to its definition. As such, the City could restrict the salary differential only to those employees who have been activated involuntarily. However, orders activating military personnel do not identify those who have been activated involuntarily. Therefore, it would not be possible, solely by reading the orders, to determine how and/or why the employee was activated. It would be incumbent upon human resources or payroll personnel to interpret the orders and/or call the employee's commanding officer to explain the orders. This would put additional responsibility on City personnel unfamiliar with reading and interpreting military orders.

Recommendations

For the reasons discussed above, a blanket ordinance authorizing the payment of a salary differential each time an employee is on military leave is not recommended at this time. The lack of expenditure oversight, potential for abuse, vulnerability to legal challenge, and the high negative impact on our sworn ranks outweigh the efforts necessary to pass individual ordinances as warranted by specific events. The Office of the City Attorney and the Personnel Department have been consulted and concur with this recommendation.

Fiscal Impact Statement

It is impossible to determine the costs associated with this blanket ordinance, which would subject the City to future liability of an unknown magnitude. The costs would certainly be higher than under previous ordinances as participation in all military service would trigger eligibility for the salary differential. However, projecting the number of employees and the amount of time served would, at best, be a guess.

The potential fiscal impact of a blanket ordinance could be limited by restricting eligibility for the salary differential to only those employees who are involuntarily activated. However, as discussed above, the implementation of such a limit is problematic.

KLS:SJO:kh183

Attachment

**FIVE DEPARTMENTS WITH HIGHEST NUMBER OF
EMPLOYEES ACTIVATED FOR MILITARY DUTY**

	Number of employees receiving Military Leave benefits	Percent of total City employees receiving Military Leave benefits
2006: City Total - 327		
LAPD sworn	194	59%
LAPD civilian	26	8%
Public Works (all Bureaus)	20	6%
Fire sworn	18	5%
Transportation	14	4%
Airport	10	3%
	% for five Departments	85%

2005: City Total - 346		
LAPD sworn	220	64%
LAPD civilian	27	8%
Public Works (all Bureaus)	19	5%
Fire sworn	19	5%
Transportation	13	4%
Airport	11	3%
	% for five Departments	89%

2004 City Total - 405		
LAPD sworn	248	61%
LAPD civilian	29	7%
Public Works (all Bureaus)	25	6%
Fire sworn	21	5%
Airport	18	4%
Transportation	16	4%
	% for five Departments	87%