



## 2006-2007 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

### CITY OF SAN JOSE'S MILITARY LEAVE POLICY FAILS TO PASS MUSTER

#### Introduction

The City of San Jose's (City) nationally recognized Military Leave Policy (Policy) has failed to pass muster due to the domino effect of mismanagement, overpayments, miscalculation of supplemental pay, and deficient communications. State law entitles members of the California National Guard and the United States Military Reserve Corps (collectively, Reservists), who are employed for at least one year by a public agency, to receive their salary for the first 30 days of military leave per fiscal year (Military and Veterans Code § 395.01). Through the adoption of a series of Resolutions, the City has paid benefits and supplemental pay beyond the prescribed 30 days for its Reservists called to active duty during the Gulf War, the Kosovo conflict, and the War on Terrorism. Supplemental pay is the difference between military pay received and City salary.

By 2003, the San Jose City Council (Council) was aware that the method for calculating supplemental pay prior to receipt of the Reservists' documents was causing a significant number of Reservists to be over or underpaid which would require reconciliation. Reconciliation is an accounting method by which the sum of the Reservists' military and supplemental pay is compared to their City salary to determine the sum the City either over or underpaid while the Reservist was on active duty leave. As described later in this report, the City's reconciliation process to resolve such pay discrepancies was flawed (Resolution No. 71443, Attachment A, March 18, 2003). In fact, in an attempt to improve the reconciliation process, the City changed the basis for calculating supplemental pay in 2005. Nonetheless, the problems of over and underpayments to Reservists did not become a priority until examples of the City's miscalculations of Reservists' pay were aired in two articles published in the *San Jose Mercury News* on November 11 and 15, 2006.

Subsequent to the public exposure that action had not been taken to promptly reconcile Reservists' accounts and improve the method for correctly calculating supplemental pay, Council directed staff to establish written reconciliation procedures, address the delay in determining the Reservists' retirement credits, and improve communication with the Reservists and their families. Although staff has issued several memoranda responding to those directives, as of April 2007, Council's concerns remain unresolved. For example, a Reservist whose most recent return from active duty was in November 2005, was informed for the first time that he owed the City \$16,347 via a letter from the Finance Department dated March 27, 2007.

After reviewing reams of public records, confidential correspondence, policies, memoranda, and interviewing City management and Reservists, this Grand Jury finds that deficient communication and marginal administration of the program has frustrated Reservists and their families and has undermined Council's directives. Further, in addition to the reconciliation problem, staff continues to struggle implementing Council directives; there is little coordination among Departments; and management has not delivered the leadership expected of them.

## **Discussion**

Pursuant to its Military Leave Policy, supplemental pay has been provided for Reservists called to active duty between September 1, 1990, and February 28, 1991 (Gulf War); between May 31, 1999, and November 27, 1999 (Kosovo); and since September 11, 2001, to the present (War on Terrorism). From January 2003 through March 2007, there have been 356 military tours that have involved 58 City-employed Reservists.

In a memorandum dated March 17, 2003, Council's intent and support for the Reservists was declared:

We should make it possible for [the Reservists to] serve their Country during this time of war with the least disruption for their families. Our support for our guard and reservists is an integral part of our National Defense.

The United States Department of Defense subsequently awarded the City a "Statement of Support for the Guard and Reserve" on May 23, 2005, recognizing the City's support for its Reservists.

Reservists desiring to receive the benefits enunciated in the Policy are required to enter a contract with the City promising to continue their City employment for at least six months after being released from active duty. The Reservists must also provide the City with copies of their military pay stubs, known formally as Leave Earning Statements (LESs) "within fifteen (15) business days of issuance for the duration of their military tour." The LESs are used to reconcile the amount the City paid the Reservists with what the City actually owed.

The receipt and maintenance of the LESs, however, has been an ongoing problem for both Reservists and the City. Reservists receive their LESs electronically via the military myPay program which requires their personal identification number (PIN) for access. The City concedes it is difficult for Reservists in combat zones to obtain and/or submit their LESs promptly as computer access is not always available. Further, to obtain LESs beyond one year, the Reservist must go through the Department of Defense, which exacerbates the problem of getting those LESs. Additionally, the Grand Jury was told that the City has failed to safeguard the LESs and other documentation that a number of Reservists had previously provided.

Repeated documentation requests to the Reservists have been inconsistent and unreasonable. For instance, on December 6, 2006, letters were sent to over twenty Reservists requesting copies of LESs from as far back as 2002. After receiving another document request on March 12, 2007, a Reservist responded:

...the documentation you request in your e-mail was delivered to your office in 2003 and I was subsequently advised in 2005 that my case was closed...the aforementioned documents, left in the custody of your office, are no longer available to me...I have made several attempts to contact your office...my phone calls to [your Department] have not been returned (March 18, 2007 Reservist's letter to Finance).

The text of these and former document requests illuminates the City's disarray and lack of clarity. In them, Payroll uses no less than ten different terms to describe LESs (check stubs, earnings statements, leave and earning statements, military earnings statements, military paychecks, military pay statements, military pay stubs, paychecks, paycheck stubs, pay stubs). Similarly, these letters identify over twenty-two people, in three different Departments, as the Reservists' contact person.

The reconciliation process is complicated by the City's initial method of calculation. Prior to 2005, until a Reservist's LES was received, supplemental military pay was calculated based on the assumption it should amount to 25% of the Reservist's City pay (March 16, 2005 Staff Memorandum to Council). This methodology frequently resulted in overpayments and was replaced in March 2005 by using the Reservist's rank, years of service, zip code, and number of dependents (April 13, 2005 Staff Memorandum to Council). However, despite knowing the overpayment problems caused by the 25% estimate method, Payroll continued to apply it for those Reservists who were on active duty at the time the method of calculation was changed. The effect of this has been to compound the instances of miscalculations and increase the sums a number of Reservists would owe the City.

Typically, the funds have been expended by the Reservists' families relying on the accuracy of the City's payment. Upon return from active duty, and after Payroll performs its supplemental pay reconciliation, these Reservists have found themselves presented with a demand for repayment of funds erroneously paid to them by the City. In some cases the overpayments go as far back as 2002. For example, on March 27, 2007, a Reservist received a letter from Finance seeking repayment of \$16,347 caused by City overpayments commencing in the Fall of 2002. Despite the City taking five years to reconcile this account, they have demanded the Reservist either challenge the calculation or select a repayment method within 30 days. (March 27, 2007 Finance's letter to Reservist). Another extreme example of this problem was an overpayment resulting in a Reservist owing \$52,527.

As early as March 2003, Council announced their intent that staff designate a single contact for Reservists and their families having questions regarding the Policy (Resolution No. 71443, March 18, 2003). The lack of progress in addressing this issue is evidenced in a series of senior staff memoranda to Council in which the appointment of this contact person is discussed (March 16, 2005, October 16, 2006, November 27, 2006 Staff Memoranda to Council). In each of these memorandum, a different contact is identified. However, overall responsibility for administration of the Policy remains divided among four Departments:

- Employee Relations has been responsible for the orientation of the Reservists who contracted to participate in the Policy. City officials explained to the Grand Jury that by March 2007 this function would shift to Human Relations. Albeit to date, such change is not reflected in any policy.
- Finance (including Payroll, a Unit within Finance) is responsible for collecting the Reservists' LESs from which Payroll then reconciles the Reservists' supplemental pay with what the City actually paid them;
- Human Resources is tasked with the review and approval of the Reservists' requests for leave of absence and distribution of the leave documentation to the affected departments;
- Retirement Services, together with Payroll, is responsible for updating any retirement credits earned by Reservists while on active duty. Retirement Services is also responsible for authorizing payments of the employee and employer retirement contributions into the Reservists' retirement accounts.

These Departments have not taken the initiative to coordinate their actions to ensure effective administration of the Policy. The result has been many instances of over and underpayments of supplemental pay, a reconciliation process assigned to staff on a low priority basis, and a lack of written reconciliation procedures.

Under the contract that implements the Policy, Reservists are entitled to retirement service credits during time spent on active duty. As with the reconciliation of the Reservists' supplemental military pay, the calculation of their retirement service credits is also delinquent. A staff memorandum to Council dated November 27, 2006, states that "the Retirement Department has an approximate three to four month backlog" which it explains is caused, among other reasons, by the fact that "all of the calculations must be done manually because HR and Retirement do not use the same [computer] systems." Council correspondence provides an example where one Reservist waited four years for his retirement contributions and service credits to be reconciled (October 12, 2006 Interoffice Memorandum).

## Conclusion

The City of San Jose's nationally recognized Policy fails to pass muster due to miscalculations, mismanagement, and deficient communications. The consequences of staff not following Council's directives are the undermining of the public's trust in their representatives, an ill-served Council, and disgruntled Reservists. The lack of executing the Policy was summed up this way on March 12, 2007, by an official in the City Manager's Office: "This has been a persistent embarrassment to the City."

## Findings

The following findings were reviewed with the subject agency:

- F1:** Prior to March 2005, Finance's method of estimating supplemental pay was flawed and resulted in under and overpayments to a number of Reservists.
- F2:** Finance has failed to act in a timely and consistent manner to collect documentation from Reservists that is required to complete the reconciliation process. Reservists and their families have been adversely affected by the City's insistent demand for copies of LESs going as far back as 2002, which are difficult to obtain after one year.
- F3:** Reconciliation of supplemental pay by Finance has been slow due to low prioritization, lack of effective supervision, and an absence of written procedures to guide staff through the complex reconciliation process.
- F4:** Retirement Services, as of November 2006, had a three to four-month backlog of work in calculating Reservists' retirement contributions and retirement service credits.
- F5:** The City does not hold senior management accountable for implementing specific directives with regard to the military leave program.
- F6:** The City's May 23, 2005, "Statement of Support for the Guard and Reserve" awarded by the United States Department of Defense in recognition of the City's support of the Reservists, has been tarnished by the prolonged lack of interdepartmental coordination to implement Council's directives.

## Recommendations

The 2006-2007 Grand Jury recommends the following actions:

- R1:** Audit the procedures for implementing the Policy within the Human Relations, Employee Relations, Retirement Services, and Finance Departments. Determine how these Departments can coordinate more effectively in serving Reservists' interests.
- R2:** Establish procedures that designate the department responsible for obtaining Reservist documentation. The procedure should set a timeline for obtaining missing documents. The responsible department should confirm in writing to the Reservists that their documentation has been received.
- R3:** Payroll should elevate the reconciliation of supplemental pay to a high priority and provide written procedures for staff. The Policy should stipulate that reconciliation of a Reservist's account will occur within 30 days of Payroll receiving the required documentation.
- R4:** Retirement Services should assign sufficient staff to calculate the Reservists' retirement credits and achieve payment of funds into the Reservists' account within 30 days of receiving reconciliation data from Finance.
- R5:** The City must proactively monitor the projects they assign staff to ensure projects are accomplished and those responsible are held accountable when such implementation does not occur.
- R6:** Delegate responsibility for overall Policy administration to a senior level manager who also will act as Military Liaison for the Reservists.

## **Bibliography**

California Military and Veterans Code, Sections 389-399.

City of San Jose, City Policy Manual. *Military Leave, Section 4.2.2*, February 2007.

City of San Jose, Letter from Director of Finance to Reservist, March 27, 2007.

City of San Jose, Memorandum. *Benefits for City Employees Called to Military Duty*, March 17, 2003.

City of San Jose, Memorandum. *Military Reservist Issues*, October 12, 2006.

City of San Jose, Memorandum. *Recommendation for Military Leave Supplemental Benefits*, March 16, 2005.

City of San Jose, Memorandum. *Staff Report on Military Supplemental Salary Calculation Analysis*, April 13, 2005.

City of San Jose, Memorandum. *Military Leave Programs for City Employees*, October 16, 2006.

City of San Jose, Memorandum. *Military Leave Program for City Employees*, November 27, 2006.

City of San Jose. *Resolution No. 71443*, adopted March 18, 2003.

City of San Jose. *Resolution No. 71892*, adopted December 16, 2003.

City of San Jose. *Resolution No. 72451*, adopted December 14, 2004.

City of San Jose. *Resolution No. 73180*, adopted May 23, 2006.

Reservist's letter to Director of Finance, City of San Jose, March 18, 2007.

United States Department of Defense. *Statement of Support for the Guard and Reserve*, May 23, 2005.

Woolfolk, John. "City Mistake to Cost Vets," *San Jose Mercury News*, November 11, 2006.

Woolfolk, John. "S. J. Council Tackles Veterans' Pay Mix-up." *San Jose Mercury News*, November 15, 2006.

## **Interviews**

December 08, 2006	Interviewed Reservists
December 15, 2006	Interviewed City Council Member and officer in City of San Jose Employee Relations Department
December 21, 2006	Interviewed officer in City of San Jose Finance Department
January 03, 2007	Interviewed personnel from Santa Clara County and City of San Jose Police Department
January 10, 2007	Interviewed personnel from City of San Jose Finance Department
February 21, 2007	Interviewed officer in City of San Jose Human Resources Department
February 22, 2007	Interviewed Reservist
March 12, 2007	Interviewed official from City of San Jose City Manager's Office
March 21, 2007	Interviewed official from City of San Jose City Manager's Office
April 10, 2007	Interviewed Reservist

**PASSED** and **ADOPTED** by the Santa Clara County Civil Grand Jury on this 1<sup>st</sup> day of May 2007.

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Ronald R. Layman  
Foreperson

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David M. Burnham  
Foreperson Pro tem

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Kathryn C. Philp  
Secretary