

## RESOLUTION NO. 18-11

### A RESOLUTION OF THE BOARD OF DIRECTORS OF THE MORAGA-ORINDA FIRE DISTRICT ESTABLISHING A TEMPORARY MILITARY LEAVE POLICY

Whereas, the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994 applies to service in the uniformed services including, but not limited to: active duty, active duty for training, initial active duty for training, inactive duty training, and the period for which a person is absent from work for the purpose of an examination to determine the fitness of the person to perform any such duty;

Whereas, USERRA provides that a person who is absent from work due to service in the uniformed services shall be deemed to be on furlough or military leave of absence while performing such service;

Whereas, the Military and Veterans Code of the State of California requires salary compensation for the first 30 days of a temporary military leave of absence in any one fiscal year for any public employee who (1) is on military leave for active military training, encampment, naval cruises, special exercises, or like activity for a period not exceeding 180 calendar days, including time involved in going to and returning from that duty, and (2) has completed one year of either public agency service, recognized military service, or a combination of both prior to the day on which the absence begins;

Whereas, the District is not required, under state or federal law, to provide paid temporary military leave of absence for periods of inactive duty training. (Mil. & Vet. Code, § 395.01.);

Whereas, the Board of Directors of the Moraga-Orinda Fire District (“the District”) adopted Resolution No. 03-04 on March 19, 2003, which augmented employee salaries for an initial period not to exceed 180 calendar days while engaged in the performance of continued active military duty in direct connection with an armed conflict;

Whereas, Resolution No. 03-04 continues in full force and effect, unaffected by this action; and

Whereas, the Board of Directors now wishes to adopt a military leave policy that clarifies the requirements and procedures regarding requesting and taking a temporary military leave of absence, and compensation during a leave of absence for military training.

NOW, THEREFORE, BE IT RESOLVED:

#### **Section 1. Temporary Leave of Absence**

A “temporary military leave of absence” means when a District employee, who is a member of the reserve corps of the Armed Forces of the United States or of the National Guard or the Naval Militia, is ordered to full-time active military training, inactive duty training, encampment, naval

cruises, special exercises or like activity for a period of ordered duty not exceeding 180 calendar days, including time involved in going to and returning from that duty. (*See* 38 USC § 4316; Mil. & Vet. Code, § 395.)

## **Section 2. One Year of Service at the District**

State law provides public employees with additional temporary military leave of absence benefits than required under federal law if the employee has been in the service of the public agency from which the leave is taken for a period of not less than one year prior to the date upon which a temporary military leave of absence begins. State law further provides that all prior military service is to be counted as public agency service when calculating whether the employee has been employed with the agency for a minimum of one year at the time of taking the military leave. (*See* Mil. & Vet. Code, § 395(d).) Therefore, for purposes of determining eligibility for the benefits described in sections 4 and 7 of this policy, a District employee will be deemed to have completed one year of service at the District if he or she has completed one year of District service, recognized military service, or a combination of both prior to the day on which the absence begins.

## **Section 3. Request for Temporary Military Leave of Absence**

To request a temporary military leave of absence, the employee must provide advance notice to the Fire Chief, either orally or in writing, prior to the first day of the leave of absence. To ensure adequate management and staffing of the District in the event of the Fire Chief taking a temporary military leave of absence, the Fire Chief shall provide advance notice to the District Board of Directors.

## **Section 4. Compensation During Temporary Military Leave of Absence**

- (a) Inactive Duty Training. The District does not provide paid temporary military leave of absence for periods of inactive duty training. (*See* Mil. & Vet. Code, § 395.01.)
- (b) Active Duty Training or Like Activity. A District employee who is on temporary military leave of absence for military duty ordered for purposes of active military training, encampment, naval cruises, special exercises, or like activity, and who has completed one year of either public agency service, recognized military service, or a combination of both prior to the day on which the absence begins, is entitled to receive his or her salary or compensation as a District employee for the first thirty (30) calendar days of a temporary military leave of absence, provided that:
  - (1) The period of ordered duty does not exceed 180 calendar days including time involved in going to and returning from the duty;
  - (2) Pay for those purposes may not exceed 30 calendar days in any one fiscal year. After the first 30 days of the temporary military leave of absence, the employee shall be deemed on leave without pay for the remaining temporary military leave during the same fiscal year;

(3) During the first 30 days of the temporary military leave of absence, the employee shall be entitled to receive pay only for those shifts or fractions of shifts which the employee would have been scheduled to work and would have worked but for the military leave. In no event shall an employee be paid for time he or she would not have been scheduled to work during said military leave;

(4) The rate of pay and accrual of benefits shall be the same rate the employee would have received for shifts he or she would have been scheduled to work or scheduled for paid holiday leave, had he or she not been on military leave; and

(c) National Guard Members. A District employee who is a member of the National Guard, and who is on temporary military leave to perform ordered military or naval duty during a proclaimed state of extreme emergency or active duty described in Section 146 of the Military & Veterans Code, shall be entitled to, without regard to the length of the employee's public service, his or her salary or compensation for the first thirty (30) days of the temporary military leave of absence, provided that:

(1) The absence does not exceed the duration of such emergency;

(2) During the first 30 days of the temporary military leave of absence, the employee shall be entitled to receive pay only for those shifts or fractions of shifts which the employee would have been scheduled to work and would have worked but for the military leave. In no event shall an employee be paid for time he or she would not have been scheduled to work during said military leave;

(3) The rate of pay and accrual of benefits shall be the same rate the employee would have received for shifts he or she would have been scheduled to work or scheduled for paid holiday leave, had he or she not been on military leave; and

**Section 5. Health Benefits During Temporary Military Leave of Absence**

The District contracts with the California Public Employee Retirement System (CalPERS) for medical coverage for its employees. District employees may continue enrollment in the CalPERS health benefit plan while on paid or unpaid temporary military leave of absence for up to one year. (Gov. Code, § 22809.) The District will continue to pay the monthly medical contributions for an employee who is on paid temporary military leave of absence for active duty training, or a like activity, for the first 30 days of such leave. (See Mil. & Vet. Code, § 395.01.) The District will not pay the monthly medical contributions for an employee who is on unpaid temporary military leave of absence for inactive duty training, unless otherwise provided in an applicable Memorandum of Understanding. (See *id.*)

**Section 6. Retirement Benefits During Temporary Military Leave of Absence**

The Contra Costa County Employees' Retirement Association (CCCERA) administers defined retirement plan benefits for District employees. CCCERA's rules and policies shall govern employee retirement contributions and retirement service credit during a paid or unpaid temporary military leave of absence. (See CCCERA Participating Employers Handbook, § 2.)

**Section 7. Other Benefits During Temporary Military Leave of Absence**

A District employee who has been in the service of the District for a period of not less than one year 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; 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. (See Mil. & Vet. Code, § 395(d).)

**Section 8. Rights Upon Return from Temporary Military Leave of Absence**

Under state law, a District employee has an absolute right to be restored to the former office or position and status formerly had by him or her at the District upon the termination of temporary military duty. If the office or position has been abolished or otherwise has ceased to exist during his or her absence, he or she shall be reinstated to a position of like seniority, status, and pay if a position exists, or if no position exists the employee shall have the same rights and privileges that he or she would have had if he or she had occupied the position when it ceased to exist and had not taken temporary military leave of absence. (See Mil. & Vet. Code, § 395(c).)

THE FOREGOING RESOLUTION WAS ADOPTED this 16<sup>th</sup> day of May, 2018 at a regular meeting of the District Board of Directors held on May 16, 2018, at 22 Orinda Way, Orinda, California 94563, on motion made by Director Famulener, seconded by Director Jex, and duly carried with the following roll call vote:

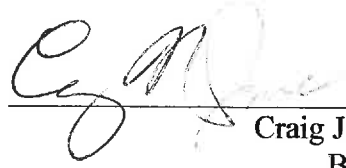
AYES: Directors Anderson, Famulener, Jex and Jorgens

NOES: None

ABSENT: President Barber


ABSTAIN: None

Dated: May 16, 2018



Craig Jorgens, Secretary  
Board of Directors

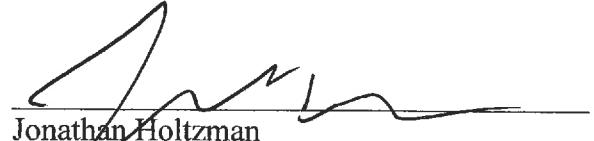
ATTEST:



---

Grace Santos  
District Secretary / Clerk

APPROVED AS TO FORM:



---

Jonathan Holtzman  
District Counsel