City of Stockton Charter Review Commission

Staff Report

ARTICLE X, OFFICERS AND EMPLOYEES; SECTION 1001, VACATION AND MILITARY LEAVE

Recommended Section for Review: Article X, Section 1001

Current Charter Language:

Section 1001

“All officers and regular employees of the City, after serving for at least one (1) year, shall be entitled to a vacation annually. Such vacation shall be at such time as the executive head of the department in which such officer or employee may be serving shall direct and shall be without loss of pay. Any City employee in the Reserve Corps, Naval Reserve, Marine Corps, or National Guard of the United States Army and Navy, when called for the annual fifteen (15) day period of intensive training, shall be permitted to participate therein and shall not suffer loss of pay through such absence nor shall such period devoted to said training be construed as the annual vacation of such employee but said employee shall have in addition thereto, the usual vacation period on pay allotted to City employees.”

(Amended Election 11/8/94 effective 5/22/95)

Recommended Charter Language:

Section 1001

“All officers and regular employees of the City, after serving for at least one (1) year, shall be entitled to a vacation annually in accordance with the applicable memorandum of understanding, compensation plan or employment contract. Such vacation shall be at such time as the executive head of the department in which such officer or employee may be serving shall direct and shall be without loss of pay. Any City employee in the Reserve Corps, Naval Reserve, Marine Corps, or National Guard of the United States Army and Navy, when called for the annual fifteen (15) day period of intensive training, shall be permitted to participate therein and shall not suffer loss of pay through such absence nor shall such period devoted to said training be construed as the annual vacation of such employee but said employee shall have in addition thereto, the usual vacation period on pay allotted to City employees.”
Problem Statement

The first sentence of Section 1001 allows for paid vacation for regular employees after one (1) year of service. Yet, this language is in conflict with Council adopted employment agreements and City practice; and therefore staff is recommending the deletion of the reference to one (1) year and is recommending clarifying language indicating that vacation will be in accordance with the applicable memorandum of understanding, compensation plan, or employment contract.

The later part of Section 1001 provides for paid leave for members of armed service if they are called for the annual 15 day period of intensive training. However, California Military and Veterans Code section 395.01, provides for a greater benefit than what is specified under City Charter §1001; and the City adopted a military leave policy in accordance with the Military and Veterans Code, whereby the City provides members of armed services paid leave for a single day of service up to 30 days paid leave per year. Therefore, the later part of Charter §1001, referencing military leave for a period of 15 days, is in conflict with current City policy and California Military Code because they both provide for paid service after a single day of service and up to 30 days per year.

Background

City Charter Article X, section 1001, was last amended in November 1994 and became effective May 1995. The first sentence of Section 1001 provides for paid vacation for regular employees after one (1) year of service. However, the City provides for leave on a pay period accrual basis beginning with the employees’ hire date. Further, the labor groups’ respective memoranda of understanding, the unrepresented employees’ compensation plan, and the appointed employees’ employment contracts, all adopted by Council, more appropriately articulate the details of the vacation benefit. Therefore, because this Charter language is in conflict with Council adopted employment agreements and City practice, staff is recommending the deletion of the reference to one (1) year and is recommending the clarifying language indicating that vacation will be in accordance with the applicable memorandum of understanding, compensation plan, or employment contract.

The later part of section 1001 provides for paid military leave if employees are called for the annual 15 days of intensive training. However, January 1, 2001, California Military and Veterans Code section 395.01, became effective and provides for a paid benefit up to 30 days a year for any occurrence of military service. Military Code section 18, “General Provisions and Definitions” further defines the applicability to local entities and the applicable military forces to include State and Federal branches of the military. To this end, in April 2003 the City adopted a Military Leave Policy (HR-53), to articulate the process for providing these benefits to City employees in accordance with the Military and Veterans Code. Since the subsequent enactment of Military and Veterans Code §395.01, conflicts with Charter §1001 and the City policy on military leave, staff is recommending this section be deleted from the Charter.

Background Materials
Attachment A - Charter Section 2513
Attachment B - City Policy HR-53, Military Leave
Attachment C - Military and Veterans Code §395.01

Sample Charter Language from Other Municipalities
Comparable Cities do not include this language in their City Charters.
ARTICLE X OFFICERS AND EMPLOYEES

SECTION 1001. VACATION AND MILITARY LEAVE.

All officers and regular employees of the City, after serving for at least one (1) year, shall be entitled to a vacation annually. Such vacation shall be at such time as the executive head of the department in which such officer or employee may be serving shall direct and shall be without loss of pay. Any City employee in the Reserve Corps, Naval Reserve, Marine Corps, or National Guard of the United States Army and Navy, when called for the annual fifteen (15) day period of intensive training, shall be permitted to participate therein and shall not suffer loss of pay through such absence nor shall such period devoted to said training be construed as the annual vacation of such employee but said employee shall have in addition thereto, the usual vacation period on pay allotted to City employees.

(Amended Election 11/8/94 effective 5/22/95)
I. PURPOSE

To establish a uniform policy and procedure for processing requests for military leave.

II. POLICY

A. It is the administrative policy of the City of Stockton to allow eligible employees to take military leave consistent with the provisions of federal and State laws. In accordance with section 395.01 of the California Military and Veterans Code and the "Military Leave" sections of the Memoranda of Understanding between the City and its various bargaining units, employees who have completed at least one year of service with the City are entitled to receive up to 30 "calendar" days of paid military leave in a calendar year. Such paid leave shall not include leave taken for inactive duty, such as scheduled reserve drill periods.

B. A regular or probationary employee who is a member of the National Guard or Reserves of the United States Armed Forces and who presents appropriate documentation (as required under the applicable Memorandum of Understanding) to his/her supervisor shall be granted either paid or unpaid leave by the City of Stockton for the period required to perform active duty or for eligible training, with the pay status to be determined as outlined in Section IV of this Directive.

III. DEFINITIONS

The following words and phrases shall have the meanings as herein provided:

A. "Active Duty" shall mean to be engaged in ordered military operations or activities such as:

1. Deployment in times of war or for other military conflicts, peace keeping, or other similar operations in which the United States of America may commit military forces;

2. Two-week encampments, cruises, or training schools for which orders have been issued; or
3. Other similar authorized activities as defined by federal or state law.

B. "Inactive Duty" shall mean those activities for which an employee has volunteered to participate and for which no orders requiring participation have been issued.

C. "Day" shall mean the period of time which an employee is normally scheduled to work in a 24-hour period, up to a maximum of 12 hours. For example, a day would equal:

1. Eight (8) hours for employees (e.g., Clerical employees) assigned to 8-hour shifts;

2. Ten (10) hours for employees (e.g., Police Patrol Officers and Police Telecommunicators) who are assigned to work 10-hour shifts; and

3. Twelve (12) hours for employees (e.g., line Fire personnel) assigned to work shifts ranging from 12 to 48 hours. In such instances, days will be calculated in 12-hour increments beginning from the time the employee would normally have assumed duty on the shift (i.e., 8:00 a.m. to 8:00 p.m. and 8:00 p.m. to 8:00 a.m., etc.).

IV. PROCEDURES

A. The employee shall complete a Form CS-58 (Request for Military Training Leave of Absence) as soon as practicable after receipt of his/her orders. Appropriate documentation detailing the required military duty shall be attached to the Form CS-58. (Attachment A.)

B. Upon approval by the employee's department head, or his/her designee, the Form CS-58 should be submitted to the Human Resources Department for approval.

C. The Director of Human Resources shall approve the request, if appropriate, and forward copies to the Payroll Section of the Administrative Services Department, the operating department, and the employee.
## CITY OF STOCKTON, CALIFORNIA
### CITY MANAGER ADMINISTRATIVE DIRECTIVE

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#### Last reviewed: 11/14/2006

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### MILITARY LEAVE

D. Military leave in excess of 30 days during a calendar year shall be taken as annual leave, deducted from accrued compensatory time, and/or taken as leave of absence without pay for that portion of the military leave which exceeds the 30-day period.

E. Except as may be provided by the City Council, in the case of a national emergency requiring military service in excess of the 30 days per calendar year period, regular employees who have been inducted into the Army, Navy, Marine Corps, Air Force, or any other branch of the Military Service of the United States or the State of California, upon request and after furnishing the required documentation, shall be afforded a leave of absence without pay for the duration of the national emergency. Said employees shall be reinstated for service upon the terms and subject to any conditions set forth in the applicable Memorandum of Understanding.

F. Neither state nor federal law requires the City to afford employees who have less than one year of service with the City immediately prior to the date on which the absence begins 30 days of paid military leave per year. Such employees who have not attained regular status should consult the Military Leave provisions of the applicable Memorandum of Understanding for information regarding how their employment, pay status, leave requests, and requests for reinstatement shall be handled.

### APPROVED:

J. GORDON PALMER, JR.
CITY MANAGER
CITY OF STOCKTON, CALIFORNIA
CITY MANAGER ADMINISTRATIVE DIRECTIVE

Subject: Directive No. HR-53 Page No. 4 of 4

MILITARY LEAVE

Effective Date: Revised From: 9/27/04 4/7/03

Last reviewed: 11/14/2006

Attachment A

City of Stockton
Personnel Department

REQUEST FOR MILITARY TRAINING LEAVE OF ABSENCE

TO: Personnel Department

I, ____________________________, a member of the ____________________________, request a military training leave with pay from ____________________________ at ____________________________ AM to ____________________________ at ____________________________ PM, a total of ____________________________ days.

Specify military unit: ____________________________
Local unit address: ____________________________
Local unit telephone number: ____________________________

(Attorney's Signature)

Approved: ____________________________
(Department Head - Personnel)

Approved: ____________________________
(Director of Personnel Services)

INSTRUCTIONS: Any probationary, regular or full-time non-competitive City employee in the military reserve corps or National Guard, when called for his annual fifteen day period of intensive training, shall be permitted to participate therein and shall not suffer loss of pay through such absence nor shall such period devoted to said training be considered as the annual vacation of such employee. The department head shall see that the information above is completely filled out by the employee in triplicate. Following department head approval, send the signed request to the Personnel Department. A COPY OF THE MILITARY ORDERS MUST BE SUBMITTED WITH THIS REQUEST.

White - Personnel
Yellow - Finance
Pink - Originating Department
MILITARY AND VETERANS CODE - MVC

DIVISION 2. THE MILITARY FORCES OF THE STATE [100 - 567] (Division 2 enacted by Stats. 1935, Ch. 389.)

PART 1. THE STATE MILITIA [100 - 491.3] (Part 1 enacted by Stats. 1935, Ch. 389.)

CHAPTER 7. Privileges and Penalties [389 - 399.5] (Chapter 7 enacted by Stats. 1935, Ch. 389.)

(a) Any public employee who is on temporary military leave of absence for military duty ordered for purposes of active military training, inactive duty training,encampment, naval cruises, special exercises, or like activity as such member, provided that the period of ordered duty does not exceed 180 calendar days including time involved in going to and returning from the duty, 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.

(b) Notwithstanding subdivision (a), a local public agency may, but is not required to, pay an employee during a period of inactive duty training.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4, of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(Amended by Stats. 2000, Ch. 928, Sec. 2. Effective January 1, 2001.)
APPROVE AMENDMENT TO CHARTER ARTICLE X OFFICERS AND EMPLOYEES

RECOMMENDATION

Approve forwarding amendments to Charter Article X, SEC 1001 to the full Council for consideration as presented by the Charter Review Advisory Commission.

The Charter Review Advisory Commission approved amendments to Charter Article X Officers and Employees Section 1001 Vacation and Military Leave at their September 25, 2013 meeting. No argument was provided by the Commission.

Suggested Amendment

SECTION 1001. Vacation and Military Leave.

All officers and regular employees of the City, after serving for at least one (1) year, shall be entitled to a vacation annually. Such vacation shall be at such time as the executive head of the department in which such officer or employee may be serving shall direct approves, and shall be without loss of pay. Any City employee in the Reserve Corps, Naval Reserve, Marine Corps, or National Guard of the United States Army and Navy, when called for the annual fifteen (15) day period of intensive training, shall be permitted to participate therein and shall not suffer loss of pay through such absence nor shall such period devoted to said training be construed as the annual vacation of such employee but said employee shall have in addition thereto, the usual vacation period on pay allotted to City employees.

Below is the excerpt from the minutes:

Chair Seligman - In reference to Article X, Section 1001 - questioned the phrase shall "direct" in reference to vacation time; suggested the word be changed to "approve".

The following change was suggested "Such vacation shall be at such time as the executive head of the department approves, and shall be without loss of pay."

Motion to approve ARTICLE X, OFFICERS AND EMPLOYEES; SECTION 1001, VACATION AND
MILITARY LEAVE - as amended

Moved by: Commissioner Stocking, seconded by Commissioner Viri.

Vote: Motion carried 9-0
THE ORIGINAL STAFF REPORT RELATED TO THIS CHARTER AMENDMENT IS ALREADY INCLUDED AT THE BEGINNING OF THIS ATTACHMENT. IT HAS NOT BEEN INCLUDED AGAIN AS AN ATTACHMENT TO THE CRAC AGENDA TO AVOID REDUNDANCY.
EXEMPLARY MINUTES OF THE NOVEMBER 12, 2013 MEETING OF THE COUNCIL CHARTER REVIEW AD-HOC COMMITTEE

3.4 13-0977 APPROVE AMENDMENT TO CHARTER ARTICLE X OFFICERS AND EMPLOYEES 04:13 PM

Legislation Text

Block I - Section 1001 Staff Report

Commission Chair Howard Seligman, Charter Review Advisory Commission - In connection with Sections 1001 and 1002, these were recommendations that came from the City Attorney’s Office based on change in law to make these compatible with existing State law; supported staff recommendations in both sections

Chair Miller, Charter Review Ad-Hoc Committee recognized that the recommended language from the staff report was different than the Commissions proposed amendment to Section 1001. Read into the record the recommended language proposed by both the Commission and City staff for the Ad Hoc Committee to consider: "All officers and regular employees of the City, after serving for at least one (1) year, shall be entitled to a vacation annually in accordance with the applicable memorandum of understanding, compensation plan or employment contract. Such vacation shall be at such time as the executive head of the department in which such officer or employee may be serving shall approve and shall be without loss of pay."

Motion 2013-11-12-0304 to approve forwarding amendments to Charter Article X, SEC 1001 to the full Council for consideration as read into the record by Chair Miller.

Moved by: Councilmember Holman, seconded by Councilmember Burgos Medina.

Vote: Motion carried 3-0

Yes: Councilmember Miller, Councilmember Holman, and Councilmember Burgos Medina.
AD-HOC COMMITTEE FINAL RECOMMENDATION
AS IT WOULD APPEAR ON THE BALLOT AND CHARTER IF ADOPTED

ARTICLE X, SECTION 1001 Vacation and Military Leave

All officers and regular employees of the City shall be entitled to a vacation annually in accordance with the applicable memorandum of understanding, compensation plan or employment contract. Such vacation shall be at such time as the executive head of the department in which such officer or employee may be serving shall direct and shall be without loss of pay.