

RESOLUTION NO. 09- 615

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, APPROVING A MANDATORY UNPAID FURLOUGH AND BENEFIT REDUCTIONS FOR DEPUTY FIRE CHIEFS AND BATTALION CHIEFS DURING OCTOBER 11, 2009 – OCTOBER 9, 2010.

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, the local, state and national economy is seeing unprecedented economic losses resulting in related decreases in revenues; and

WHEREAS, the City's 2009-10 Fiscal Year General Fund budgets face an estimated \$19.9 Million shortfall due to declines in projected revenues, particularly sales taxes and transient occupancy taxes, rising labor costs, and the State of California budget; and

WHEREAS, projected loss of revenues requires the City to take actions in addition to those actions taken to date, potentially including additional reductions to operating budgets, staff layoffs, reduction in employee compensation, reduction of personnel staffing requirements, application for Federal Stimulus funding, retirement incentives, suspension of benefit plans, implementation of cost recovery programs, renegotiation of contracts and further utilization of undesignated unreserved General Fund balance; and

WHEREAS, an unpaid Mandatory Furlough Plan or benefit reductions equivalent to a five percent (5%) reduction in compensation is a viable method for achieving savings; and

WHEREAS, it is in the City's best interest to support and encourage such programs; and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF COSTA MESA that an unpaid Mandatory Furlough Plan or a commensurate 5% salary reduction in compensation and benefit reductions should be implemented during October 11, 2009 – October 9, 2010 upon the declaration by Council Resolution as follows:

1. The executive flexible benefit plan contribution for the payment of premiums for affected employees assigned to a 56-hour work week shall be reduced for each employee by the dollar amount equivalent to the difference between a five percent (5%) reduction in pay and the one percent (1%) contribution per Section 6 below.

2. Battalion Chiefs and Deputy Fire Chiefs assigned to a 40-hour work week may elect to participate in a Mandatory Furlough Plan in lieu of a reduction in the executive flexible benefit plan bucket per Section 1. The election is irrevocable unless the employee is subsequently assigned to a 56-hour work week. Employees who are assigned to a 56-hour work week are not eligible to participate in the Mandatory Furlough Plan. Employees who choose to participate in the Mandatory Furlough Plan will be required to furlough 84 hours. Employees who are temporarily assigned to a 40-hour work week due to injury are not eligible to participate in the Mandatory Furlough Plan. The Mandatory Furlough Plan shall be conducted according to the Mandatory Furlough Plan Guidelines, attached as Exhibit A.

3. Effective, October 11, 2009 through October 9, 2010, the City agrees to temporarily amend the existing vacation policy for employees who elect the Mandatory Furlough Plan option as follows:

The current maximum levels are established are as follows:

<u>Years of Service</u>	<u>Maximum Accrual</u>
1-2	184.0
3-4	232.0
5-9	280.0
10-14	328.0
15-19	376.0
20+	424.0

Upon reaching the maximum level, the biweekly accrual of vacation leave hours will be placed in the employee's Secondary Vacation Leave Bank. The maximum levels for the Secondary Vacation Leave Bank will be established at 84 hours. Once the maximum accrual in the Secondary Vacation Leave Bank is reached, the employee will stop accruing additional vacation leave.

If an employee has a Secondary Vacation Leave Bank, hours in that bank will be used first. Effective October 10, 2010 employees will no longer accrue vacation leave beyond the maximum accrual level. It is the responsibility of the employee to manage accrued vacation time off to not exceed the cap or maximum amount allowed. If after October 10, 2010 an employee still has a Secondary Vacation Leave Bank balance, the employee will still be required to use hours in the secondary bank first.

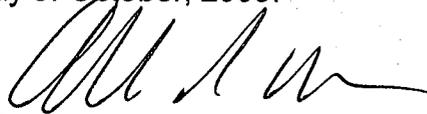
4. The VantageCare RHS (Post Retirement Health) Plan will be suspended, which will include the suspension of both the one percent (1%) contribution from employees and the one percent (1%) match deposited by the City on behalf of

each full-time employee. Plan contributions will be suspended for all Battalion Chiefs and Deputy Fire Chiefs for 26 pay periods.

5. The City of Costa Mesa has contracted with the California Public Employees Retirement System (CalPERS) to provide retirement benefits to eligible City employees under the 3%@55 formula. The City has agreed to implement procedures to amend the CalPERS Fire Safety Plan to provide Government Code 21363.2 (3%@50) retirement benefits for the Costa Mesa Firefighters Association. Battalion Chiefs and Deputy Fire Chiefs are members of the Fire Safety Plan and are thus eligible for the 3%@50 CalPERS retirement benefit. This benefit will be effective in January 2010 or as soon thereafter as permitted by CalPERS.
6. Effective October 11, 2009, in conjunction with the City's suspension of the RHS Plan and the implementation of the 3%@50 retirement benefit, the Battalion Chiefs and Deputy Fire Chiefs agree to apply the 1% employee contribution per Section 4 (that would otherwise have been returned to the employee) towards the cost of the 3%@50 CalPERS retirement benefit. If the City and Employee Associations mutually agree to continue the suspension longer than 26 payperiods, the Battalion Chiefs and Deputy Fire Chiefs agree to continue applying the 1% employee contribution towards the cost of the 3%@50 CalPERS retirement benefit for the term of the suspension. Employees who will retire prior to December 31, 2009 will be exempt from this section.
7. Effective October 11, 2009, the City agrees to amend the Sick Leave procedures for Battalion Chiefs assigned to a 56-hour work week as follows:

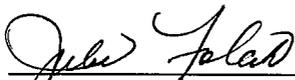
Secondary Leave Bank – If an employee has a Secondary Sick Leave Bank, hours in that bank will be used first in accordance with the rules regarding sick leave use up to 72 hours per calendar year. Hours in this bank may also be used in the event of a verified non-industrial disability which has resulted in an absence of sixty (60) consecutive calendar days.

PASSED AND ADOPTED this 6th day of October, 2009.



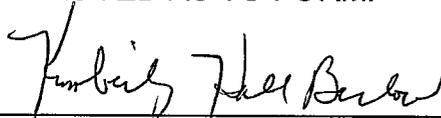
Allan R. Mansoor, Mayor

ATTEST:



Julie Folcik, City Clerk

APPROVED AS TO FORM:



Kimberly Hall Barlow, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

I, JULIE FOLCIK, City Clerk of the City of Costa Mesa, DO HEREBY CERTIFY that the above and foregoing is the original of Resolution No. 09-61 and was duly passed and adopted by the City Council of the City of Costa Mesa at a regular meeting held on the 6th day of October, 2009, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS: MANSOOR, LEECE, BEVER, FOLEY, MONAHAN

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

IN WITNESS WHEREOF, I have hereby set my hand and affixed the seal of the City of Costa Mesa this 7th day of October, 2009.



JULIE FOLCIK, CITY CLERK

(SEAL)

EXHIBIT A

Mandatory Furlough Program Guidelines Deputy Fire Chiefs and Battalion Chiefs Assigned to a 40-Hour Work Week

The Mandatory Furlough Program will provide for an approximate four percent (4%) reduction in work hours (84 hours per year) with a commensurate reduction in payment for the hours not worked for all Deputy Fire Chiefs and Battalion Chiefs assigned to a 40-hour work week.

- I. **Effective Dates of Program** – The Mandatory Furlough Program will be effective October 11, 2009 – October 9,, 2010 unless otherwise specified in these guidelines.
- II. **Usage of Furlough Leave** – Employees must utilize a 84 hours of furlough leave by October 9, 2010. Employees may not use more than 40 hours of furlough leave within any three-week period. It is the employee's responsibility to monitor their furlough leave bank to ensure they use all of their leave time during the assigned time period. When an employee submits a timely furlough leave request and the Fire Chief must deny it due to the operational needs of the City and/or Department and the employee is unable to schedule alternative hours off prior to October 9, 2010, an exception may be granted by the Fire Chief with a written explanation from the employee's supervisor and advance approval from the City Manager. If such an exception is granted, employee will be allowed additional time to utilize the remainder of their 84 furlough leave hours, but no later than December 19, 2010.
- III. **Scheduling of Furlough Leave** – Procedures for requesting and scheduling furlough leave will be determined by the Fire Chief. Every effort will be made to accommodate the employee's request. However, it is recognized that business operations of the City have priority. Should a request for furlough leave be denied and the employee disagrees with the reasons for denial, the employee may submit a written petition to the Fire Chief for a final decision on the matter. The Fire Chief shall respond to any such petition within five (5) days of receiving the petition, and the Fire Chief's decision shall be final. The grievance procedure shall not apply to disputes concerning furlough leave. Once a furlough leave request has been approved, it may not be cancelled unless there is an emergency situation or upon mutual agreement by management and the employee. Management reserves the right to assign employees to take their leave time if it is necessary to prevent a potential negative impact on Departmental operations.
- IV. **Alternate Work Week Schedules** – Alternate work week schedules will continue to be honored subject to operational need. Managers and supervisors will review alternative work week schedules and furlough days on a case-by-case basis to determine the impact on operations and if necessary will work individually with their employees to come up with alternatives to their current work schedules.
- V. **Retirement** – In most cases, unpaid furlough leave will not affect an employee's CalPERS service credit. Employees must be paid 1,720 hours within a year to earn one full year of service credit. Furlough leave would not change the payrate that is reported to CalPERS. However, it can reduce special compensation that is paid as a factor of earnings. Therefore, in some cases, final compensation could be reduced, but only for members with earnings based special compensation whose highest 12 month period at retirement includes furlough leave.
- VI. **Cafeteria Plan Benefits While on Furlough Leave** – Employees shall receive continued medical, dental, vision, life insurance and other cafeteria plan benefits including the City's flex contribution. Employees will be responsible for the same employee contributions. If an employee's check for a pay period which includes furlough leave is not sufficient to cover a particular deduction in its entirety, the deduction will not be taken from that check, but will be deducted from the following paycheck.

- VII. **Furlough Leave as Hours Worked**– Furlough leave will be counted as hours worked for the purposes of calculating overtime, earning and computing paid leave accrual, completion of probationary period, promotion eligibility, computing seniority and step increase eligibility. Employees will not be eligible for overtime compensation during the same 24-hour day in which they have taken furlough leave unless the employee has been assigned to mandatory overtime in the case of an emergency as determined by the Fire Chief. Furlough leave will not be considered hours worked for other forms of compensation.
- VIII. **Exempt Employees** – Exempt employees will be considered non-exempt employees under the Fair Labor Standards Act (FLSA) guidelines in any FLSA workweek in which one or more hours of unpaid furlough time off occurs. Such employees will be eligible for hourly pay for any work performed during that FLSA workweek, just as non-exempt employees would be. Such employees may also be eligible for overtime compensation during any such FLSA workweek according to applicable FLSA guidelines. During a week in which a furlough occurs, employees must use leave accruals for partial day absences, may not telecommute or perform services for the City outside regular working hours unless specifically authorized to do so. On actual furlough days, FLSA exempt employees may not come to work.
- IX. **Employees Changing to a 40-Hour Work Week** – Employees assigned to a 40-hour work week after October 11, 2009 will have the option to participate in the Mandatory Furlough Program. Employees must make this election upon assignment to assignment to the 40-hour work week. Battalion Chiefs who move from a 56-hour work week to a 40-hour work week will have their required furlough hours prorated based on the dollar value remaining to meet the amount equivalent to an approximate 4% salary reduction. Employees who are promoted to a classification assigned to a 40-hour work week will have their required furlough hours prorated based on 3.23 hours for each pay period remaining through October 9, 2010 to a maximum of 84 hours.
- X. **Employees Changing to a 56-Hour Work Week** – Battalion Chiefs who move from a 40-hour work week to a 56-hour work week after October 11, 2009 will no longer be eligible to participate in the Mandatory Furlough Plan. Employees will be required to take a reduction in their flexible plan bucket. The required reduction will be prorated based on the dollar value remaining to meet the amount equivalent to an approximate 4% salary reduction.
- XI. **Separating Employees** – Employees who separate employment from the City prior to October 9, 2010 will have the number of required furlough leave hours prorated. The amount of furlough leave hours required will be prorated based on 3.23 hours for each pay period worked since October 11, 2009 to a maximum of 84 hours. Employees who have not met the prorated required hours must schedule the remaining furlough leave hours prior to their separation from employment.
- XII. **Employees on Unpaid Leaves of Absences** – Employees on approved unpaid leaves of absences (excluding suspensions for disciplinary purposes) may run their furlough leave concurrently with their leave of absence.
- XIII. **Employees on Medical, Military, or Administrative Leaves of Absences** – Employees on medical leaves (FMLA, PDL, CFRA or leaves due to work related injuries), military leave, or administrative leave will be required to participate in the Mandatory Furlough Program upon returning to work. The deadline to utilize furlough leave hours will be extended by the equivalent amount of time the employee was on leave since October 11, 2009, but no longer than one year. For example, if an employee is out on leave for five months, he/she will be required to utilize 84 hours of furlough leave by March 11, 2011.