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Nov. 8, 2011

11/9/11 Council Meeting

Sponsor: Ferguson

nw

Proposed No.: 2011-0388

JP Moved  
PASSED 9-0

1 **STRIKING AMENDMENT TO PROPOSED ORDINANCE 2011-0388, VERSION**

2 **1**

3 On page 1, beginning on line 8, strike everything through page 5, line 103, and insert:

4 "BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

5 **SECTION 1. Findings:**

6 A. In response to the terrorist attacks on September 11, 2001, the United States  
7 initiated military action requiring activation of the Armed Forces and members of the  
8 National Guard, including employees of King County.

9 B. King County employees called to active duty provide a valuable service to  
10 King County, the region and the nation by serving their country.

11 C. In consideration of the service King County employees provide to King  
12 County, the region, and the nation, the King County executive signed Executive Order  
13 No. PER 18-4 (AEO) on October 5, 2001, effective September 25, 2001. The executive  
14 order provided for (1) continuation of medical, dental, vision, and life insurance benefits  
15 to eligible employees and their families if the employees were ordered to or volunteered  
16 for active duty or active duty training in any branch of the Armed Forces, the National  
17 Guard, or the United States Public Health Service; (2) a paid leave of absence from their

18 county position at their regular rate of pay, less the amount of any military pay to which  
19 they were entitled, for employees ordered to active duty if they were members of the  
20 reserves of any branch of the Armed Forces or the National Guard, on or before  
21 September 11, 2001; and (3) leave without pay for employees who enlisted in the Armed  
22 Forces or the Armed Forces Reserves after September 11, 2011.

23 D. Also in consideration of public employee service in the military, state law,  
24 RCW 38.40.060, provides for twenty-one days of paid military leave of absence from  
25 work per year for public employees who are members of the Armed Forces, the National  
26 Guard, or the Armed Forces Reserves, so that they can attend required military duty,  
27 training, or drills.

28 E. The federal Uniform Services Employment and Reemployment Rights Act of  
29 1994 ("USERRA"), 38 U.S.C. Chapter 43, was enacted to minimize the disruption to the  
30 lives of persons serving in the military and to provide guidance for employers. USERRA  
31 largely regulates the reemployment of service members and affords protection to them  
32 against discrimination related to their service. While USERRA does not require an  
33 employer to provide military leave differential pay, where an employer adopts a policy of  
34 providing the pay, USERRA protects the employee's rights under that policy.

35 F. Since the time that the 2001 Executive Order was signed, the United States has  
36 become engaged in multiple military conflicts, and numerous county employees have  
37 volunteered for or have been ordered to active duty, including active military training  
38 duty.

39 G. It is the current policy of King County to support to the extent possible those  
40 employees in the Armed Forces, including the National Guard, and the United States

41 Public Health Service Commissioned Corps who volunteer for or are ordered to active  
42 duty. On May 24, 2010, the King County council issued a proclamation pledging  
43 continued support for King County employees who serve in the National Guard and the  
44 Armed Forces Reserves.

45 H. In consideration for the service of King County employees while serving in  
46 the military, providing continuity of benefits and compensation for county employees  
47 who volunteer for or are called to active duty in the Armed Forces or the United States  
48 Public Health Service Commissioned Corps is consistent with the King County Strategic  
49 Plan by promoting King County as an employer of choice and furthering the goal of  
50 developing and empowering its employees.

51 SECTION 2. Ordinance 12014, Section 26, as amended, and K.C.C. 3.12.260 are  
52 each hereby amended to read as follows:

53 A. A leave of absence ~~((for active military duty or active military training duty~~  
54 ~~shall be granted to eligible employees in accordance with applicable provisions of state~~  
55 ~~and/or federal law; provided, that a request for such leave shall be submitted to the~~  
56 ~~appointing authority in writing by the employee and accompanied by a validated copy of~~  
57 ~~military orders ordering such active duty or active training duty)) shall be granted, in~~  
58 accordance with applicable provisions of state or federal law, to any employee who  
59 voluntarily or upon demand by the Washington state or the United States government  
60 leaves his or her position with the county, either to determine his or her physical fitness  
61 to enter or to actually enter active duty or training in the United States Armed Forces,  
62 including without limitation the Washington National Guard, the United States Air  
63 National Guard, the United States Army National Guard, and the United States Coast

64 Guard, or the United States Public Health Service Commissioned Corps. The leave of  
65 absence shall continue until the conclusion of the employee's active duty service.

66 B. Employees are required to give their employing county agency advance notice  
67 of the need for military leave, preferably in writing, though oral notification is sufficient.  
68 Notice should be provided as soon as is reasonable under the circumstances, and, if  
69 feasible to do so, service members should provide thirty days advance notice; however,  
70 advance notice is not required if prevented by military necessity or otherwise impossible  
71 or unreasonable under the circumstances, to the extent provided in federal law and  
72 regulations. Written notice should be accompanied by a validated copy of the military  
73 orders ordering the active duty or active training duty. Oral notice should be  
74 supplemented as soon as is reasonable with a validated copy of the military orders.

75 C. An employee who (1) is eligible for benefits under K.C.C. 3.12.040, (2)  
76 volunteers or is ordered to serve in the Armed Forces or the United States Public Health  
77 Service Commissioned Corps, or to receive associated training that requires a leave of  
78 absence from the employee's county position, and (3) has exhausted annual military leave  
79 provided pursuant to state and federal law or a collective bargaining agreement, shall be  
80 granted a paid leave of absence from the employee's county position at the employee's  
81 regular base rate of pay less the amount of military pay to which the employee is entitled.  
82 The paid leave of absence shall continue until the conclusion of the employee's active  
83 duty service in the Armed Forces or the United States Public Health Service  
84 Commissioned Corps. This section applies only to employees who volunteer or are  
85 ordered to serve in the Armed Forces or the United States Public Health Service

86 Commissioned Corps no later than December 31, 2012, or whatever later date the  
87 Council might designate by ordinance.

88 D. Receipt of the pay provided for in the preceding section is contingent upon the  
89 employee providing the employing county agency with supporting documentation  
90 verifying (1) the employee's rank, (2) that the employee is on active duty, and (3) the  
91 amount of military pay to which the employee is entitled.

92 SECTION 3. Ordinance 9967 Section 2, as amended, and K.C.C. 3.12.262 are  
93 each hereby amended to read as follows:

94 ~~A. ((Any employee eligible for leave and insured benefits who upon demand by~~  
95 ~~the United States Government vacates his or her position with the county either to~~  
96 ~~determine his or her physical fitness to enter, or to actually enter upon active duty or~~  
97 ~~training in the Washington National Guard, the United States Armed Services, or the~~  
98 ~~United States Public Health Service shall receive medical, dental and life benefits for the~~  
99 ~~time period commencing with the beginning of an employee's military leave of absence~~  
100 ~~and continuing until active duty has been completed. These employees shall continue to~~  
101 ~~receive the medical, dental and life benefits that they received prior to separation from~~  
102 ~~county employment.)) An employee who is eligible for benefits under K.C.C. 3.12.040~~  
103 ~~and who volunteers or is ordered to serve in the Armed Forces or the United States Public~~  
104 ~~Health Service Commissioned Corps, or to receive associated training that requires a~~  
105 ~~leave of absence from the employee's county position, shall continue to receive medical,~~  
106 ~~dental, vision, and life insurance benefits, and shall continue to accrue vacation and sick~~  
107 ~~leave, until the conclusion of the employee's active duty service in the Armed Forces or~~  
108 ~~the United States Public Health Service Commissioned Corps.~~

109 B. Receipt of medical, dental, vision, and life insurance benefits and leave  
110 accruals is contingent upon the employee providing his or her employing county agency  
111 with supporting documentation verifying that the employee is on active duty. The  
112 documentation shall be provided by the employee upon commencing military leave,  
113 annually in September and upon leaving military service.

114 SECTION 4. This ordinance authorizes and ratifies prior acts of the executive in  
115 granting special additional military leave and benefits after September 11, 2001, and  
116 provides specific legislative authorization for such leave and benefits.

117 SECTION 5. Severability. If any provision of this ordinance or its application to  
118 any person or circumstance is held invalid, the remainder of the ordinance or the  
119 application of the provision to other persons or circumstances is not affected.

120 SECTION 6. This ordinance is not retroactive, except to the extent provided in  
121 Section 4."

122 **EFFECT: The amendment would:**

- 123 **1. Clarify the terminology in references to the Armed Forces.**
- 124 **2. Clarify the timing of the 2001 executive order and the description of its**  
125 **terms.**
- 126 **3. Clarify the summary of RCW 38.40.060.**
- 127 **4. Make clear that paid leave and benefits have been and are being granted to**  
128 **eligible county employees in consideration for their service while serving in**  
129 **the military.**
- 130 **5. Provide that the leave granted pursuant to the proposed ordinance will**  
131 **continue until the conclusion of the employee's active duty service, but that**

- 132           **eligibility for paid leave applies only to employees who begin their leave no**  
133           **later than the end of 2012 or whatever later date as the Council might**  
134           **designate by ordinance.**
- 135           **6. Clarify the notice requirements contained in the proposed ordinance.**  
136           **7. Clarify other language in the proposed ordinance.**  
137           **8. Make clear that the ordinance is not retroactive, except to the extent**  
138           **provided in Section 4.**  
139           **9. Make technical corrections.**