

STATE OF GEORGIA

CITY OF DORAVILLE

ORDINANCE NO. 2009-04

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF DORAVILLE, GEORGIA AS AMENDED TO ADOPT A NEW SECTION, CHAPTER 2 ADMINISTRATION, ARTICLE IX PERSONNEL POLICIES, SECTION 2-245 MILITARY LEAVE, CITY OF DORAVILLE EMPLOYEE MANUAL AND POLICE DEPARTMENT STANDARD OPERATING PROCEDURES; TO PROVIDE SEVERABILITY; TO PROVIDE PENALTIES; TO PROVIDE FOR REPEAL OF CONFLICTING ORDINANCES; TO PROVIDE FOR AN ADOPTION AND EFFECTIVE DATE; TO PROVIDE FOR CODIFICATION; AND TO PROVIDE FOR OTHER LAWFUL PURPOSES.

WHEREAS, the Mayor and Council of the City of Doraville, Georgia are the duly elected governing authority of the City of Doraville;

WHEREAS, the Mayor and Council have determined to provide benefits to City personnel who are called upon or volunteer to serve their County by military service so that such service will not result in financial deprivation to the service member and their family;

WHEREAS, federal law contained in the Uniformed Service Employment and Reemployment Rights Act of 1994 ("USERRA") provides minimal standards so that persons called to military service know their jobs will be preserved if and when called to military services;

WHEREAS, Georgia law also includes requirements for the hiring and reemployment of individuals serving in the military pursuant to O.C.G.A. § 38-2-279;

WHEREAS, the Mayor and Council desire to encourage and demonstrate the value of employees who also serve in the armed forces;

WHEREAS, the Mayor and Council desire to modify the City of Doraville Employee Manual and any relevant Police Department standard operating procedure to reflect the local benefits;

WHEREAS, the City has a duly adopted a personnel policy and corresponding employee handbook;

WHEREAS, after due deliberation the Mayor and Council have elected to adopt further language in the policy, so as to define the City's benefits relating to City employees who also serve in the armed forces; and

WHEREAS, the health, safety, welfare and aesthetics of the citizens of the City of Doraville shall be improved and protected by adoption and implementation of this Ordinance.

THE MAYOR AND COUNCIL OF THE CITY OF DORAVILLE, GEORGIA
HEREBY ORDAIN:

Section 1.

That the Code of Ordinances, City of Doraville, Georgia is hereby amended by adding an article to be numbered Article IX Personnel Policies, Chapter 2 Administration, Section 2-245, which said section reads as follows:

"Chapter 2 Administration

Article IX. Personnel Policies

Sec. 2-245. Military Leave.

Section 2-245. Military Leave, Section 4.1.2. Provisions, A. Military Leave of the City of Doraville Employee Manual and all corresponding provisions of the Police Department Section A-120 J. Military shall be modified hereby to read as follows:

General – The City complies with and strongly supports the provisions contained in the Uniformed Service Employment and Reemployment Rights Act of 1994 (USERRA or "the Act") and O.C.G.A. § 38-2-279 in the hiring and reemployment of individuals serving in the military.

The City's Military Leave and Reemployment Policy is meant to highlight important provisions in state and federal laws regarding military leave. Individuals who must be absent from work due to military service should contact the Mayor to ensure their eligibility for military leave and reemployment, and the rights and benefits to which they are entitled.

Eligibility - 18 Days Service: Any covered employee who is a voluntary or involuntary member of the National Guard or any organized military reserve force, or component of the United States Armed Forces, pursuant to O.C.G.A. § 38-2-279, will be allowed leave of absence with full pay not to exceed a total of eighteen (18) days paid leave per federal fiscal year (October 1 – September 30) in any one continuous period of absence to go or return from or to attend ordered military duty upon presentation of Orders.

The period of fully paid military leave will begin on the date specified in Orders and extend until the final date of ordered duty or for eighteen (18) workdays whichever period is shorter.

Service Beyond 18 Days: Any covered employee who is under Orders to be in military service as defined under USERRA and O.C.G.A. § 38-2-279 beyond 18 days will be paid the difference between the employee's military duty pay and their salary with the City where their City salary is more than their military pay.

The employee shall request military leave immediately on a Request for Leave Form and submit a copy of their official duty papers to their Department Head who will forward a copy of the employee's official Orders to the Mayor. During the entire period of leave, health and medical benefits, vacation and sick leave, and service time will continue to accrue. Time will continue to accrue for retirement purposes. All benefits covering employee beneficiaries shall continue.

"Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service, including:

- Active duty*
- Active duty for training*
- Initial active duty for training*
- Inactive duty training*
- Full-time National Guard duty*
- Absence from work for an examination to determine a person's fitness for any of the above types of duty.*
- Funeral honors duty performed by National Guard or reserve members.*

Reemployment rights extend to persons who have been absent from a position of employment because of "service in the uniformed services." An individual may be deemed ineligible for reemployment rights if the individual is separated from military service under other than honorable conditions, as described in Section 4304 of the Act.

Notice required - An employee who will need to be absent from work because of an obligation to serve in the uniformed services must give advance notice to the City, unless the giving of notice is impossible or unreasonable or military necessity prevents the giving of notice.

Length of Leave – Generally, the cumulative length of service that causes an employee's absences from a position may not exceed five (5) years. If one of the eight (8) recognized

exceptions to the maximum length of leave as listed in Section 4312(c) of USERRA applies, the employee's absence may exceed five (5) years. Employees are advised to contact the Mayor's office to determine in advance whether their leave(s) will be subject to the five year limit.

Pay and Benefits During Military Absence – An employee on a military leave of absence is entitled to all rights and benefits provided to the other employees on leaves of absence.

Under Georgia law, eligible public employees are entitled to their regular compensation while engaged in the performance of ordered military duty and while going to and returning from such duty, for a maximum of eighteen (18) days in any one federal fiscal year (October 1 – September 30). In the event the Governor of Georgia declares an emergency and orders an eligible public employee to state active duty as a member of the National Guard, such employee is entitled to 30 days' pay in one federal fiscal year. City employees shall be paid the difference between their regular pay and their military service pay, either after the 18 day period in the federal fiscal year or after the 30 day time period when the Governor declares an emergency until the employee is released to resume his City employment. An employee is not required to use vacation or sick leave during a military absence, however.

In the event that the Governor declares an emergency, a covered employee called to State active duty as a member of the National Guard, shall inform their Department Head immediately and shall be placed on leave of absence with pay for a period of up to thirty (30) workdays in any one calendar year or continuous period of active duty service. The period of paid military leave will begin on the date specified in the Orders and extend until the employee is released from duty. The employee shall request military leave immediately and submit a Request for Leave HR Form accompanied by the Orders to the Department Head and subsequently forwarded to the Mayor.

Pension Benefits – The City will further comply with the requirements of O.C.G.A. § 38-2-279(f) regarding rights and contributions under retirement systems. Under federal law, an employee is entitled to seniority as if the employee were continuously employed during the time of service. Military service counts as service for purposes of vesting and accrual of benefits. Military service will not be counted as a break in service for purposes of employee pension benefit plans.

Health Coverage – An employee may elect to continue health insurance coverage during service. If an employee elects not to continue coverage while on duty and the employee returns to City employment, an employee returning from military leave is entitled to immediate reinstatement of health insurance benefits upon returning to work, with no waiting periods or exclusions for preexisting conditions.

Procedure for Reporting Back to Work – An eligible individual must report back to work within the required time period in order to retain his or her reemployment rights. The employee should whenever possible provide 30 days notice to the City prior to the date the employee wants to come back to work. The employee must come back to work after being released from military duty by the 14th regularly scheduled work day that would fall after the last day of military service.

Please contact the Mayor's office for information regarding reporting back to work if the individual is hospitalized due to injury sustained during service.

Consequences for Reporting Back to Work Late – If an employee is late returning to work, the employee will be subject to the City's general rules and disciplinary measures regarding absences from work. A late return does not, however, automatically forfeit the employee's right to reemployment.

Reemployment Rights – Employee will be placed in the position the employee would have been in had employment not been interrupted, provided the employee is qualified for that position. If the employee is not qualified, the City will make reasonable efforts to qualify the employee for the position. If the employee remains unqualified for the position after reasonable efforts to qualify him/her, the employee may be reinstated in the employee's former position or a position of equivalent seniority, status and pay.

Regular employees who leave employment with the City to perform active duty for military service with the United States are entitled to reemployment rights with the City in accordance with the federal laws governing reemployment rights. Such employees are entitled to reinstatement if:

- They submit notice for reinstatement of employment with the specified time limitations.*
- They satisfactorily completed their military service; and*
- They are able to perform the essential duties of their job.*

On return, they are eligible for appointment to the same position or to a similar position that was held prior to active duty assignment. They are protected from discharge, except for cause, for one (1) year after reemployment and are reinstated with the same seniority status and pay they would have received if they had not been inducted into military service. For purposes of determining the pay, merit increases including step raises, will be given while the employee is on military leave.

The employee must be placed in a position employee would have been in or in a position of like seniority, status, and pay. If the employee is unqualified for such a position and cannot become qualified through reasonable efforts of the employer, the employee may return to his/her former position.

Please contact the Mayor if the employee returning from service has been disabled during military service, rendering him/her unqualified for his/her former position.

Consequences of separation of service - If the employee separates from City service within sixty (60) days of return to City employment, then any non-seniority based benefits (sick leave, difference in pay) shall be lost and the employee shall receive any non-seniority based benefit to which they are entitled based upon their status and accruals in place before the date ordered military duty.

Section 2.

a. It is hereby declared to be the intention of the Mayor and Council that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are or were, upon their enactment, believed by the Mayor and Council to be fully valid, enforceable and constitutional.

b. It is hereby declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section paragraph, sentence, clause or phrase of this Ordinance.

c. In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Mayor and Council that such invalidity, unconstitutionality or

unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

Section 3.

Penalties provided for violations of this Ordinance are set out in Section 1-12, as amended, of the Code of Ordinances, City of Doraville, Georgia and are hereby incorporated as if set out fully.

Section 4.

All ordinances or parts of ordinances in conflict herewith are hereby expressly repealed.

Section 5.

The preamble of this Ordinance shall be considered to be and is hereby incorporated by reference as if fully set out herein.

Section 6.

The Ordinance shall be codified in a manner consistent with the laws of the State of Georgia and the City of Doraville.

Section 7.

It is in the intention of the governing body, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the code Ordinances, City of Doraville, Georgia and the sections of this Ordinance may be renumbered to accomplish such intention.

Section 8.

This Ordinance shall become effective upon its adoption by the Mayor and Council.

SO ORDAINED, this 2 day of March, 2009.

CITY OF DORAVILLE

Ray Jenkins
Ray Jenkins, Mayor

February 17, 2009
First Reading

March 2, 2009
Second Reading

ATTEST:

Rhonda A. Blackmon
Rhonda Blackmon, City Clerk



APPROVED AS TO FORM:

Murray J. Weed
Murray J. Weed, City Attorney

	Yea	Nay
Maria Alexander	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Brian Bates	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pam Fleming	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Donna Pittman	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bob Roche	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bob Spangler	<input checked="" type="checkbox"/>	<input type="checkbox"/>