

RESOLUTION NO. 23-61

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TUSTIN RELATING TO COMPENSATION FOR UNREPRESENTED PART-TIME NON-BENEFITTED EMPLOYEES AND SUPERSEDING RESOLUTION 22-53

WHEREAS, the employees covered by this Resolution constitute part-time non-benefitted personnel; and

WHEREAS, the City Council has consulted with the City Manager concerning the proposed employment terms contained herein;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Tustin (the "City") authorizes staff to implement the provisions of this Resolution and modify the City's Classification and Compensation Plans to reflect the changes approved in this Resolution, and that the wages, hours and conditions of employment be adopted and set forth as follows:

Section 1: Classifications

A "part-time" position is a position that 1) has a work week of fewer hours than the full work week established for a full-time position and 2) is compensated on an hourly basis. Part-Time Non-Benefitted employees are not represented by an employee association and are not entitled to benefits unless otherwise mandated by law. Classifications that are uniquely assigned to the Part-Time Non-Benefitted unit are listed in Appendix A. The City may also appoint a Part-Time Non-Benefitted employee to any job classification that has a full-time counterpart in another employee group.

Section 2: Effective Dates

The effective date of each section is January 1, 2024, unless otherwise stated herein.

Section 3: Salary

The hourly salary rates for employees covered by this Resolution are hereby incorporated and listed in Appendix A.

The hourly salary rate for Master Reserve Officer is equivalent to the hourly salary rate of Police Officer Step A and will be automatically adjusted any time the hourly salary rate for Police Officer Step A is adjusted.

The hourly salary rate for any Part-Time Non-Benefitted employee in a job classification with a full-time equivalent (not listed in Appendix A) will be the same as the equivalent step in the hourly salary range of the corresponding full-time job classification, as noted in the applicable Memorandum of Understanding or Salary Resolution and will be

automatically adjusted any time the hourly salary range for the full time equivalent is adjusted.

Employees in the classification of Temporary Employee may receive an hourly wage at any level in the salary range. While the salary step for a Temporary Employee may be adjusted, the hourly salary for an employee in this classification is not expected to progress from one step to the next in the same manner as a full-time employee, as these are not merit increase steps.

Section 4: Acting Pay

An employee assigned to temporarily work in a higher classification normally occupied by a full-time employee will receive Acting Pay in an amount equal to 5% of the employee's base pay. Acting Pay will be paid effective the beginning of the first full pay period in which the employee serves in the Acting assignment.

Since the Public Employees' Pension Reform Act of 2013 (PEPRA) prohibits the City from providing a CalPERS retired annuitant with any benefit, incentive, compensation in lieu of benefits, or other form of compensation in addition to the hourly pay rate, CalPERS retired annuitants are not eligible to receive Acting Pay.

If the employee is enrolled in a retirement plan through the California Public Employees' Retirement System (CalPERS), the monetary value of Acting Pay shall be reported to CalPERS as Special Compensation for classic members as defined under the Public Employees' Pension Reform Act (PEPRA) of 2013. The parties agree that Acting Pay ("Temporary Upgrade Pay") is described in Title 2 CCR, Section 571(a)(3) as a "premium pay" – a type of reportable special compensation. This pay is not reportable as special compensation for employees defined as "new members" under PEPRA. It is ultimately CalPERS who determines whether any form of pay is reportable special compensation.

Section 5: Retirement

IRS Section 457 OBRA Deferred Compensation Plan

In accordance with federal law, all part-time employees must be enrolled in Social Security or another "qualified" retirement plan. Since the City does not participate in Social Security, Part-Time Non-Benefitted employees will be enrolled in the City's IRS Section 457 OBRA deferred compensation plan. Employees are required to contribute 5.5% of salary to the deferred compensation plan every pay period. The City will contribute an additional 2% of salary, for a total contribution of 7.5%.

Any employee who is required to enroll in the City's IRS Section 457 OBRA deferred compensation plan has the option to make additional voluntary contributions to the plan in addition to the mandatory employee contribution of 5.5% of salary. Part-Time employees who are not required to enroll in the City's IRS Section 457 OBRA deferred compensation plan (i.e., employees enrolled in the CalPERS retirement plan or CalPERS

retired annuitants) are not permitted to make any contributions to the OBRA deferred compensation plan.

CalPERS Retirement Plan

The City's contract with CalPERS states that persons compensated on an hourly basis are excluded from the retirement system, therefore Part-Time Non-Benefitted employees will generally not be enrolled in the CalPERS retirement system. Nevertheless, a Part-Time Non-Benefitted employee may be enrolled in the CalPERS retirement plan if the employee is already an active member of the CalPERS retirement system or if the employee has or will exceed 1,000 hours worked in a fiscal year.

Any Part-Time Non-Benefitted employee enrolled in the CalPERS Miscellaneous plan by December 31, 2011 shall be enrolled in CalPERS 2% @ 55 plan in accordance with Government Code Section 21354 for Local Miscellaneous members. The plan includes both an employer and employee contribution. These employees are responsible for paying the employee contribution of seven percent (7%) of the employee's wages through a pre-tax payroll deduction. The City has adopted the CalPERS resolution in accordance with IRS Code section 414(h)(2) to ensure that the employee contribution is made on a pre-tax basis. The plan has been amended to include Section 21573 (Third Level of 1959 Survivor Benefits), Section 20042 (One-Year Final Compensation), and Section 21024 (Military Service Credit as Public Service). The employee is responsible for paying the employee portion of the 1959 Survivor benefit premium.

Any Part-Time Non-Benefitted employee enrolled in the CalPERS Miscellaneous plan on or after January 1, 2012, who is a "classic member" as defined by the Public Employees' Pension Reform Act (PEPRA) of 2013 shall be enrolled in CalPERS 2% @ 60 plan for Local Miscellaneous members. The plan includes both an employer and employee contribution. These employees are responsible for paying the employee contribution of 7% of the employee's wages through a payroll deduction. The City has adopted the CalPERS resolution in accordance with IRS Code section 414(h)(2) to ensure that the employee contribution is made on a pre-tax basis. This plan provides retirement benefits based on the highest annual average compensation earnable during the three consecutive years of employment immediately preceding the effective date of his or her retirement or as designated by the employee in accordance with Government Code section 20037. The plan provides for 3rd level of 1959 Survivor benefits with the employee paying the employee portion of the premium.

Any Part-Time Non-Benefitted employee enrolled in the CalPERS Miscellaneous plan who is first employed by the City on or after January 1, 2013, and is defined as a "new member" by the Public Employees' Pension Reform Act (PEPRA) of 2013, shall be enrolled in the CalPERS 2% @ 62 plan for Local Miscellaneous members. These employees are responsible for paying the employee contribution of one-half of the total normal cost of the plan, as defined by CalPERS, through a payroll deduction. Effective the pay period including July 1, 2021, the employee contribution is 6.25%. This amount will be determined by CalPERS in the future. The City has adopted the CalPERS

resolution in accordance with IRS Code section 414(h)(2) to ensure that the employee contribution is made on a pre-tax basis. This plan provides retirement benefits based on the highest annual average compensation earnable during the three consecutive years of employment immediately preceding the effective date of his or her retirement or as designated by the employee in accordance with Government Code Section 7522.32(a). The plan provides for 3rd level of 1959 Survivor benefits with the employee paying the employee portion of the premium.

CalPERS Retired Annuitants

Pursuant to the Public Employees' Pension Reform Act of 2013 (PEPRA), the City is prohibited from providing a CalPERS retired annuitant with any benefit, incentive, compensation in lieu of benefits, or other form of compensation in addition to the hourly pay rate. Accordingly, the City will not enroll retired annuitants in the IRS Section 457 OBRA deferred compensation plan. Further, since participation in a deferred compensation plan is considered a benefit, retired annuitants are not permitted to voluntarily enroll in any of the City's other Section 457 deferred compensation plans.

Section 6: Paid Sick Leave

All Part-Time Non-Benefitted employees, other than CalPERS retired annuitants, will be provided with paid sick leave in accordance with California's Healthy Workplaces, Healthy Family Act of 2014, as amended by SB 616 effective January 1, 2024. In accordance with the California Public Employees' Pension Reform Act of 2013 (PEPRA), CalPERS retired annuitants are not entitled to paid sick leave or any other compensation or benefits in addition to the hourly base salary.

At the beginning of each fiscal year, on the pay period that includes July 1, the City will credit each Part-Time Non-Benefitted employee with 40 hours (or five work days for any employee whose regular work schedule exceeds eight hours per day) of paid sick leave for use under the terms of this policy. Employees who are hired after the start of any given fiscal year will also be credited with 40 hours (or five work days) of paid sick leave upon initial employment. At the end of each fiscal year, any unused paid sick leave from the previous 12-month period will expire and will not be carried over to the next 12-month period.

An employee is eligible to begin using hours from his/her accrued paid sick leave bank after 90 consecutive days of employment with the City of Tustin. If an employee separates from the City of Tustin and is re-hired within one year from the employee's separation date, the 90 days of service requirement may be satisfied cumulatively over the two periods of employment.

Paid sick leave is not a privilege which an employee may use at his/her discretion. Paid sick leave may only be used for the following reasons, in accordance with state law:

1. For the employee's own diagnosis, care, or treatment of an existing health

condition or preventative care.

2. For the diagnosis, care, or treatment of an existing health condition or preventative care for an employee's family member. For purposes of this policy, "family member" includes an employee's child, spouse or registered domestic partner, parent, grandparent, grandchild, or sibling.
3. With appropriate certification, to obtain relief or services related to being a victim of domestic violence, sexual assault, or stalking, including: a temporary restraining order or restraining order; other injunctive relief to help ensure the health, safety or welfare of the employee or his/her children; medical attention for injuries caused by domestic violence, sexual assault, or stalking; services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking; psychological counseling related to an experience of domestic violence, sexual assault, or stalking; or safety planning and other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.

An employee may use no more than 40 hours (or five work days for any employee whose regular work schedule exceeds eight hours per day) of paid sick leave per fiscal year and must use paid sick leave in increments of no less than two (2) hours per day.

In order to use paid sick leave, an employee must notify his/her supervisor of the need for such leave and its probable duration at least one hour prior to the scheduled start of the employee's shift. Paid sick leave shall not be granted unless such advance notice has been given; however, the department head may grant an exception to this policy when it is determined that the employee's failure to notify his/her supervisor in a timely manner was due to circumstances beyond the employee's control. A supervisor may require an employee to confirm that the requested use of paid sick leave meets one of the purposes specifically provided for in the law.

Employees will be compensated for any sick leave hours used under this policy at the employee's regular rate of pay for the workweek in which the employee uses paid sick leave (typically, this is simply the employee's base hourly rate of pay). Paid sick leave is not considered hours worked for purposes of calculating overtime. For any employees who are enrolled in the CalPERS retirement system (due to previous CalPERS member status), paid sick leave hours are reportable to CalPERS in accordance with Government Code section 20630.

An employee is not entitled to compensation for any unused accrued paid sick leave upon separation from employment. An employee who is promoted directly from a Part-Time Non-Benefitted position to a full-time or part-time benefitted position will not carry over any paid sick leave hours remaining at the time of promotion; instead, the employee will be eligible for accrual and use of General Leave under the terms of the applicable memorandum of understanding or salary resolution.

Section 7: At-Will Employment Relationship

Employment in a Part-Time Non-Benefitted position is at-will and based on continued programmatic needs. No guarantees are made related to hours or longevity. Employment may be terminated at any time, with or without cause. For all Part-Time Non-Benefitted employees, hours worked will typically vary from week to week and will generally not exceed 1,000 hours per fiscal year (July 1 through June 30). For any CalPERS retired annuitants employed as Part-Time Non-Benefitted employees, hours worked will not exceed 960 hours per fiscal year.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Tustin held on the 5th day of December 2023.

DocuSigned by:
Austin Lumbar
AUSTIN LUMBAR,
Mayor

ATTEST:

DocuSigned by:
Erica Yasuda
ERICA N. YASUDA,
City Clerk

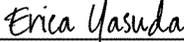
APPROVED AS TO FORM:

DocuSigned by:
David E. Kendig
DAVID E. KENDIG,
City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS
CITY OF TUSTIN)

I, Erica N. Yasuda, City Clerk and ex-officio Clerk of the City Council of the City of Tustin, California, do hereby certify that the whole number of the members of the City Council of the City of Tustin is five; that the above and foregoing Resolution No. 23-61 was duly passed and adopted at a regular meeting of the Tustin City Council, held on the 5th day of December 2023, by the following vote:

COUNCILMEMBER AYES:	<u>Lumbard, Clark, Gallagher, Gomez, Schnell</u>	(5)
COUNCILMEMBER NOES:	_____	(0)
COUNCILMEMBER ABSTAINED:	_____	(0)
COUNCILMEMBER ABSENT:	_____	(0)
COUNCILMEMBER RECUSED:	_____	(0)

DocuSigned by:

 ERICA N. YASUDA,
 City Clerk



APPENDIX A – PART-TIME NON-BENEFITTED HOURLY SALARY RANGES

Effective the pay period that includes January 1, 2024

Classification	Step A
Administrative Intern PT	\$ 16.00
Graduate Intern PT	\$ 20.00
Maintenance Aide PT	\$ 16.00
Master Reserve Officer PT*	\$ 41.42
Office Assistant PT	\$ 19.00
Parking Control Officer PT	\$ 19.00
Police Cadet PT	\$ 16.00
Police Reserve Officer – Level I PT	\$ 24.00
Police Reserve Officer – Level II PT	\$ 19.00
Police Reserve Officer – Level III PT	\$ 16.00
Recreation Facilities Assistant PT	\$ 18.00
Recreation Leader I PT	\$ 16.00
Recreation Leader II PT	\$ 17.00
Recreation Program Assistant PT	\$ 20.00

Classification	Step A	Step B	Step C	Step D	Step E	Step F
Temporary Employee	\$ 16.00	\$ 20.00	\$ 25.00	\$ 30.00	\$ 35.00	\$ 40.00
	Step G	Step H	Step I	Step J	Step K	Step L
	\$ 45.00	\$ 50.00	\$ 55.00	\$ 60.00	\$ 65.00	\$ 70.00
	Step M	Step N	Step O	Step P	Step Q	Step R
	\$ 75.00	\$ 80.00	\$ 85.00	\$ 90.00	\$ 95.00	\$ 100.00
	Step S	Step T	Step U	Step V		
	\$ 105.00	\$ 110.00	\$ 115.00	\$ 120.00		

Notes:

*The hourly salary rate for Master Reserve Officer is equivalent to the hourly salary rate of Police Officer Step A and will be adjusted any time the hourly salary rate for Police Officer Step A is adjusted

**The hourly salary rate for any Part-Time Non-Benefitted employee in a job classification with a full-time equivalent (not listed on this salary schedule) will be the same as the hourly salary rate of the full-time job classification, as noted in the applicable Memorandum of Understanding or Salary Resolution for the full-time equivalent