RESOLUTION NO. 2678-10

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WINDSOR AMENDING RESOLUTION NO. 1163-02 UPDATING THE TOWN OF WINDSOR PERSONNEL POLICY AND PROCEDURES FAMILY AND MEDICAL LEAVES, SECTION 11

WHEREAS, the Town of Windsor ("Town") desires to establish and implement personnel policies and procedures that describe the employment relationship between the Town and its employees; and

WHEREAS, the Town has developed personnel policies and procedures, including Section 11: Family and Medical Leaves, attached as Exhibit "A" to this resolution; and

WHEREAS, these rules may be amended from time to time if presented in writing and approved by Town Council; and

WHEREAS, the Town has provided notice of the amended personnel policy and procedure to all affected employee organizations, and all organizations have had the opportunity to meet and consult regarding the contents of this personnel policy and procedure.

NOW, THEREFORE BE IT RESOLVED that the Town Council of The Town of Windsor, hereby adopts the amended Personnel Policy and Procedure – Section 11. Family and Medical Leaves, becoming effective immediately.

PASSED, APPROVED, AND ADOPTED this 5TH day of May 2010, by vote as follows:

AYES:	**COUNCILMEMBERS ALLEN, FUDGE, GOBLE, SCHOLAR AND MAYOR SALMON**
NOES:	**NONE**
ABSTAIN:	**NONE**
ABSENT:	**NONE**

SAM SALMON, MAYOR

ATTEST:

MARIA DE LA O, TOWN CLERK

Attachment:
Exhibit A

EXHIBIT A

11.

FAMILY AND MEDICAL LEAVES

11.1. Statement of Rule

11.1.1. In accordance with the Family and Medical Leave Act of 1993 (FMLA) and the "California Family Rights Act" (CFRA), eligible employees may take up to a total of twelve (12) work weeks of family and medical leave during a twelve (12) month period for a qualifying event. FMLA/CFRA leave may only be taken for the following reasons:

(a) Because of the employee's own "serious health condition" that makes the employee unable to perform the functions of his or her position;

(b) The birth of an employee's child and to care for a newborn;

(c) The placement of a child with an employee in connection with the adoption or foster care of a child by an employee;

(d) To care for a child, parent, spouse, or a registered domestic partner who has a "serious health condition";

(e) For a "qualifying exigency" arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation and/or;

(f) To care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the servicemember.

Qualifying Exigency Leave

The FMLA allows for eligible employees to take FMLA leave while the employee's spouse, son, daughter or parent (the "covered military member") is on active duty or call to active duty status for a "qualifying exigency." Unlike military caregiver leave which is available for the care of a covered servicemember in the Regular Armed Forces, Reserves, or National Guard, qualifying exigency leave is only available to an eligible employee with an immediate family member who is on active duty or call to active duty status in support of a contingency operation as a member of the Reserves or National Guard. It is not available to employees with family members in the Regular Armed Forces.

*Examples of qualifying exigencies may include:

- Short-notice deployment;
- Military events and related activities;
- Childcare and school activities;
- Financial and legal arrangements;
- Counseling;
- Rest and recuperation;
- Post-deployment activities and/or;
- Additional activities.

11.1.2. If leave is requested for the birth, adoption or foster care placement of a child of the employee, leave must be concluded within one year of the birth or placement of the child. An employee is entitled to leave for one of these purposes for a minimum duration of two weeks per state law. However, on two occasions during the 12 month period the employee is eligible for leave in an increment less than two weeks but not less than one work day.

11.1.3. The maximum duration of combined leave for both a husband and wife working for the Town is limited to a total of twelve (12) working weeks if leave is taken for the birth or placement for adoption or foster care of the employees' child.

11.1.4. If an employee requests leave for a qualifying exigency, the employee must provide sufficient information indicating that a family member is on active duty or has been called to active duty status, verifying that the requested leave is for one of the qualifying exigencies listed, and stating the anticipated duration of the absence.

11.1.5. An employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember is allowed to take 26 workweeks of leave during a single 12-month period to care for the covered servicemember with a serious injury or illness incurred in the line of duty, while on active duty, for which the servicemember is:

(a) undergoing medical treatment, recuperation, or therapy;
(b) otherwise in outpatient status and/or;
(c) otherwise on the temporary disability retired list.

As with leave for other FMLA-qualifying reasons, an employee on military caregiver leave is entitled to paid health benefits as if the employee continued to work.

11.2. Eligibility

11.2.1. Employees are eligible for leave pursuant to this rule if the employee has been employed with the Town for at least 12 months and has been employed for at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave.

11.3. Notification

11.3.1. Employees shall provide the Town as much notice as possible of their need for FMLA/CFRA leave on forms provided by the Human Resources Division. For a foreseeable leave not based on a qualifying exigency, an employee must give at least 30 days advance notice. If 30 days notice is not practicable, the employee must give notice as soon as practicable. If less than 30 days notice is given, the Town may require explanation of why 30 days advance notice was not practicable. If timely notice is not given, the period of delay may count as non-FMLA absence. In addition, if an employee knows that he/she will need leave in the future, but does not know the exact date(s), the employee shall inform his/her supervisor of the estimated time when the leave will be needed. Violation of the provisions of this policy may result in a delay of the granting of the leave.

11.3.2. Employees may be required to periodically report on their status and intent to return to work.

11.4. Medical Certification

11.4.1. Employees who request leave for their own serious health condition or to care for a child, parent, spouse, or registered domestic partner who has a serious health condition may be required to provide written certification from the health care provider of the individual requiring care. If the leave is for the employee's own serious health condition, the certification must include a statement that the employee is unable to work at all or unable to perform the essential functions of his/her position.

11.4.2. Employees must provide the certification prior to when the leave begins. If the leave is unforeseeable, certification must be provided within 15 calendar days after the notification of the need for the leave. Violation of the provisions of this policy may result in a delay of the granting of the leave until the required certification is provided.

11.4.3. If the Town has reason to doubt the validity of a certification, the Town may require a medical opinion of a second health care provider chosen and paid for by the Town. If the second opinion is different from the first, the Town may require the opinion of a third provider jointly approved by the Town

and employee, but paid for by the Town. The opinion of the third health care provider will be binding.

11.4.4. If an employee requests leave intermittently (a few days or hours at a time) or on a reduced leave schedule for their own serious health condition, or to care for an immediate family member with a serious health condition, the employee must provide medical certification that such leave is medically necessary. "Medically necessary" is defined as a medical need for the leave and certifies that the leave can best be accomplished through an intermittent or reduced leave schedule.

11.4.5. The Town may seek re-certification upon expiration of the time period which the health care provider originally estimated, if the employee requests additional leave.

11.5. Designation

11.5.1 It is the employer's responsibility to designate leave taken for an FMLA reason as FMLA qualifying. The designation can be made by the employer once it is determined that the leave was taken for a FMLA-qualifying reason.

11.5.2. If an employer does not properly designate leave, the employer may retroactively designate leave as FMLA leave with appropriate notice to the employee as required by the FMLA regulations provided that the employer's failure to timely designate leave does not cause harm or injury to the employee. In all cases where leave would qualify for FMLA protections, an employer and an employee can mutually agree that leave be retroactively designated as FMLA leave.

11.6. Use of Accrued Leaves

11.6.1. Leave under this policy is unpaid. If an employee is on an upaid FMLA leave, they are required to use their accrued vacation, and personal or family sick leave, (until the leaves are exhausted) concurrently with FMLA/CFRA leave. Employees must use their accrued sick leave (until the sick leave is exhausted) concurrently with the leave if the leave is for the employee's own serious health condition. If an employee is on a paid leave such as Workers Comp, disability, Paid Family Leave, Pregnancy Disability, etc., employees may elect to use vacation, accrued sick leave and/or accumulated compensatory time to substitute for all or part of the otherwise unpaid leave under this policy.

11.6.2. If the employee takes a leave of absence for any reason which is FMLA/CFRA qualifying, the Town may designate that leave as running concurrently with the employee's 12-week FMLA/CFRA leave entitlement; provided that the Town will notify the employee at the time of the designation, and the designation will not be made retroactively except as provided by law.

11.7. Continuation of Benefits

11.7.1. For the duration of the leave pursuant to this rule, the Town shall maintain its portion of the payment for the employee's health insurance premiums under its group health plan. The employee is still responsible for paying their share of supplemental or dependant coverage. The Town may require the employee to reimburse the Town for these costs for the entire leave period if the employee fails to return to work at the conclusion of the leave, provided that the failure to return to work is for a reason other than: (a) the continuation, recurrence or onset of a serious health condition; or (b) the Town Manager waives the requirement owing to some circumstances beyond the control of the employee.

11.8. Reinstatement

11.8.1. Upon expiration of leave, an employee is entitled to be reinstated to the position of employment held when the leave commenced, or to a comparable position with equivalent employment benefits, pay and other terms and conditions of employment. An employee maintains these rights unless the former position is abolished during the period of leave and the employee would otherwise not have been laid off. Employees have no greater rights to reinstatement, benefits and other conditions of employment than if the employee had been continuously working during the leave period.

11.8.2. As a condition of reinstatement of an employee whose leave was due to the employee's own serious health condition, the Town will require a fitness-for-duty certification from the health care provider, certifying that the employee is able to resume work. Failure to provide such certification will result in denial of reinstatement.

11.9. Definitions

11.9.1. For the purposes of this section, the following definitions apply.

(a) "12-Month Period:" A rolling period measured backward from the date leave is taken and continuous with each additional leave day taken.

(b) "Child:" A child under the age of 18 years, or 18 years or older who is incapable of self-care in three or more of the instrumental activities of daily living, such as grooming and hygiene, bathing, dressing, eating, cooking, cleaning, taking public transportation, etc.

(c) "Parent:" The biological parent of an employee or an individual who stands or stood *in loco parentis* (in place of a parent) to an employee when the employee was a child. This term does not include parents-in-law.

(d) "Spouse:" A husband or wife as defined or recognized under California State law for the purpose of marriage.

(e) "Registered Domestic Partner": Domestic partners who are registered with the State of California.

(f) "Serious Health Condition:" An illness, injury, impairment, or physical or mental condition that involves:

(1) any period of incapacity or treatment in connection with a hospital, hospice or residential medical care facility;

(2) any period of incapacity requiring absence from work, of more than three full consecutive calendar days if the employee or family member is treated two or more times by a health care provider within 30 days from the first day of incapacity, absent extenuating circumstances, and the first visit has taken place within seven days of the first day of incapacity;

(3) continuing treatment of a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days; or

(4) for prenatal care by a health care provider. Continuing treatments include two or more visits to a health care provider; two or more treatments by a health care practitioner on referral from, or under the direction of a health care provider; or a single visit to a health care provider that results in a regimen of continuing treatment under the supervision of a health care provider.

(g) "Health Care Provider:" A medical practitioner authorized to practice medicine in the State of California and performing within the scope of their practice as defined under state law, or as otherwise defined in the Family and Medical Leave Act.

11.9.2. In the event that a conflict arises between this article and federal or state law or regulations, or if some aspect of the Family and Medical Leave is not covered by this article, the federal and state law and regulations will prevail.

11.10. Americans with Disabilities Act Leave

11.10.1. In the event an employee becomes disabled within the meaning of the Americans with Disabilities Act or other applicable disability laws and the Town is reasonably able to accommodate the limits or restrictions on that employee's ability to work, the Town will do so provided that the employee is qualified to perform the duties of a job that may be made available to him or her. In effectuating the provisions of this section and the duties of the law, the Town's efforts to reasonably accommodate the employee shall take precedence over

and preempt any other conflicting provisions or limitations in MOUs or these personnel rules, provided that the Town will not terminate or permanently reassign any regular employee. The Town will notify the applicable labor association and, upon request by the association, meet with it to discuss reasonable accommodation questions affecting unit members prior to implementation.

11.11. Pregnancy Disability Leave:

11.11.1. Statement of Rule

11.11.1.1. Disabilities caused or contributed to by pregnancy, childbirth or related medical conditions, for all job-related purposes, shall be treated the same as non-service related disabilities caused or contributed to by other medical conditions, under any disability insurance or sick leave plan available in connection with employment. Written or unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement and payment under any disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy, childbirth or related medical conditions on the same terms and conditions as they are applied to other such disabilities.

11.11.2. Procedure

11.10.2.1. An employee whose attending physician has certified that she is physically incapacitated from performing her duties due to pregnancy or childbirth is eligible to take leave without pay for a reasonable period of time; provided, such period shall not exceed four months (120 calendar days).

(a) An employee requesting pregnancy disability leave shall submit, in writing, her intent to take leave. The leave request shall indicate when or whether the employee intends to return to work.

(b) The request for pregnancy disability leave shall be submitted to the department director with a copy to the Administrative Services Director and be accompanied by a statement from the attending physician.

(c) In order to receive compensation while on disability leave, a full-time employee may elect to use any accrued sick leave consecutively in the beginning of the leave until the sick leave is exhausted and is then entitled to voluntarily use any accrued vacation, compensatory time or personal leave during the four month period of leave time.

(d) Leave under this article is granted according to the health of the female employee. Leave for purposes of childcare after the employee

is medically able to return to work shall be granted to the employee on the same basis as leave for other non-medical reasons.

(e) Upon expiration of the approved leave, the employee shall be reinstated to her former position, or to a comparable one with equivalent employment benefits, pay and other terms and conditions of employment if the former position is abolished during the period of leave and the employee would otherwise not have been laid off. Prior to the employee being reinstated, the Administrative Services Director may require a statement from the attending physician that the employee is physically capable of resuming the regular duties of her position. Failure to return to work after the authorized four month leave period, unless extended via FMLA/CFRA leave, causes the pregnant employee to have no reinstatement rights.

11.11.2.2. Any period before and after birth where a mother is not able to work for medical reasons may be considered FMLA leave for a serious health condition.

11.11.2.3. In the event that a conflict arises between this article and federal or state law or regulations, or if some aspect of pregnancy disability law is not covered by this article, the federal and/or state law and regulations will prevail.