



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** September 1, 2020

**TO:** Mayor and City Council Members

**FROM:** Trish Raver, Human Resources Director

**SUBJECT:** **Resolution Of The City Council Of The City Of Emeryville Approving Side Letter Of Agreement Between The MESA And SEIU Regarding Calculation And Payment Of Dispatch Staff Overtime During COVID-19 Emergency Schedule Implementation And Authorizing The Executive Director To Execute The Side Letter Agreement**

### RECOMMENDATION

Staff recommends that the City Council adopt the Resolution approving the Side Letter of Agreement between the Management of Emeryville Services Authority and SEIU resulting in paying Dispatch staff the difference between the FLSA Overtime rate paid and the SEIU MOU Overtime rate requested for overtime resulting from implementation of the Emergency Work Schedule for Police Department Dispatch employees.

### BACKGROUND

On March 16, 2020, in response to directives from County Public Health concerning the COVID-19 virus, most City facilities were closed on March 17, 2020. The City issued a declaration of local emergency on March 17, 2020. Based on the emergency declaration and for the health and safety of Dispatchers, as well as to ensure continuity of operations in the event COVID-19 affected Dispatchers, the then Chief of Police modified the regular forty (40) hour work week and the eight (8) hour, five (5) day per week work schedule for Dispatchers set forth in the SEIU Memorandum of Understanding (MOU). The Chief of Police implemented a 14 day on/14 day off work schedule for Dispatchers. The Dispatchers were broken up into two (2) platoons, the first dispatch platoon worked 14 straight 12-hour work days, then the second platoon worked their 14 day, 12-hour work period with the alternating platoon being off work for the work period. The Emergency schedule was implemented from March 16 – April 12, 2020.

On March 28, 2020, Human Resources, in consultation with outside legal counsel, provided Police Management with responses to a variety of pay questions from Dispatchers relative to the implementation of the Emergency Dispatch schedule which was then shared with SEIU. In part, the response advised that overtime would be paid pursuant to the Fair Labor Standards Act (FLSA) guidelines which mandates minimum overtime standards.

On April 2, 2020, Human Resources e-mailed SEIU a Meyers-Milias-Brown Act (MMBA) Emergency Exception Notice regarding the City's need to modify the regular work schedule of dispatchers due to the COVID-19 pandemic. The exception allowed the City to modify the regular work schedule of dispatchers thereby creating a new regular work schedule. The new regular work schedule complied with Fair Labor Standards Act (FLSA) work week standards where any hours over 40 per week results in FLSA overtime/compensatory time being paid. The application of MOU provisions relating to the new regular work day schedule and work week period were followed according to this emergency schedule. The notice provided for SEIU to request a meet and confer over the impacts of the modification to the work schedule of Dispatchers.

On June 4 and June 9, 2020, the MESA met and conferred with SEIU over the impacts of the previous emergency modification to the schedules of Dispatchers from March 17 – April 12, 2020.

## **DISCUSSION**

SEIU understands the MESA had a right to modify schedules in the event of an emergency and has not opposed the modification of the schedules for the Dispatchers. However, SEIU is opposed to the MESA calculating overtime during the period of March 16, 2020 – April 12, 2020 based on FLSA minimum guidelines.

SEIU has requested that Overtime earned under the Emergency schedule be calculated based on overlaying how overtime is paid pursuant to the MOU onto the FLSA minimum for determining work hours eligible for overtime.

Ten (10) dispatchers worked the Emergency Schedule.

## **FISCAL IMPACT**

The fiscal impact to the City Budget is approximately \$12,500.

## **STAFF COMMUNICATION WITH THE PUBLIC**

None.

## **CONCLUSION**

Typically, SEIU would have had an opportunity to meet and confer over the impacts of the Dispatch schedule change prior to implementation. Because the schedule change was made on an emergency basis, the MESA was not able to meet and confer with SEIU over the schedule change prior to implementation. Advice provided by outside counsel was followed regarding overtime payment; however, SEIU's application of the MOUs Overtime provision is valid. Only through meet in confer sessions, did the City understand the impact of the implementation of the emergency schedule change on Dispatch staff. The schedule change had a significant impact on Dispatchers and payment of overtime

based on the proposal of SEIU is appropriate and warranted. Staff recommends that the City Council adopt the attached Side Letter of Agreement based on the proposal of SEIU regarding payment of the difference in the calculation of overtime to Dispatchers during the Emergency Period of March 16, 2020 through April 12, 2020.

There is an accompanying resolution on the MESA agenda in which the MESA Board authorizes the Executive Director to execute the Side Letter Agreement on behalf of MESA.

**PREPARED BY:** Trish Raver, Director of Human Resources

**APPROVED AND FORWARDED TO THE  
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



---

Christine Daniel, City Manager

**ATTACHMENT**

1. Resolution of the City Council Approving the Side Letter of Agreement between the City and SEIU Regarding Calculation and Payment of Dispatch Staff Overtime During COVID-19 Emergency Schedule Implementation
2. Side Letter of Agreement – Dispatch Emergency Schedule Implementation