

RESOLUTION NO. 20-88

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

WHEREAS, 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; and

WHEREAS, 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); and

WHEREAS, 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; and

WHEREAS, on June 4 and June 9, 2020, the MESA met and conferred with SEIU over the impacts of the emergency modification to the schedules of Dispatchers during the implementation period; and

WHEREAS, SEIU 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 Dispatchers during the Emergency Period of March 16, 2020 through April 12, 2020; and

WHEREAS, due to the schedule change for Dispatchers being made on an emergency basis, the MESA was not able to meet and confer with SEIU over the schedule change prior to implementation; and

WHEREAS, SEIU's application of the MOUs Overtime provision is valid. Only through meet in confer sessions did the MESA understand the impact of the implementation of the emergency schedule change on Dispatch staff; and

WHEREAS, the schedule change had a significant impact on Dispatchers and payment of overtime based on the proposal of SEIU is appropriate and warranted; and

WHEREAS, the fiscal impact of the payment of Dispatcher overtime based on the SEIU proposal to the City Budget is approximately \$12,500; and

WHEREAS, this resolution will be brought to the City of Emeryville City Council for approval upon MESA adoption on September 1, 2020; now, therefore, be it

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RESOLVED, by the City Council of the City of Emeryville hereby approves the Side Letter Agreement, in the form attached hereto, between the MESA and SEIU regarding calculation and payment of Dispatch Staff overtime during the COVID-19 emergency schedule implementation on September 1, 2020 and authorizes the Executive Director to execute the side letter agreement.

ADOPTED, by the City Council of the City of Emeryville at a regular meeting held Tuesday, September 1, 2020, by the following vote:

AYES:	<u>5</u>	Mayor Patz, Vice Mayor Martinez, and Council Members Bauters, Donahue, and Medina
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	

DocuSigned by:

Christian R. Patz

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MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Michael Quinn

CITY ATTORNEY

Side Letter of Agreement (Dispatch Emergency Schedule Implementation)

I. Parties

The Parties to this Side Letter of Agreement (herein after “Side Letter”) are the City of Emeryville (“City”) and the Management of Emeryville Services Authority (herein after referred to as “MESA”) and the Service Employees International Union, Local 1021 (herein after referred to as the “Union”).

II. Background

The Parties are the signatories to a Memorandum of Understanding (hereinafter referred to as the “MOU”) setting forth terms and conditions of employment for City/MESA employees within the Service Employees International Union, Local 1021 bargaining unit.

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. For the health and safety of Dispatchers, as well as to ensure continuity of operations in the event COVID-19 affected Dispatchers, the then Police Chief modified the regular forty (40) hour work week and the eight (8) hour, five (5) day per week work schedule for Dispatchers. The Police Chief 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. This Emergency Schedule was implemented from March 16 – April 12, 2020. On or about the implementation date, the Union was advised that overtime would be paid pursuant to the Fair Labor Standards Act (FLSA) guidelines which mandates minimum overtime standards where any hours over 40 hours per work week resulted in FLSA overtime/compensatory time being paid.

Due to the emergency, the Parties did not have an opportunity to meet-and-confer over the implementation of the Dispatch Emergency Schedule and the Union was notified on April 2, 2020 of the City/MESA citing an Emergency Exception Notice pursuant to the Meyers-Milias-Brown Act (MMBA) regarding the City/MESA’s need to modify the regular work schedule of dispatchers due to the COVID-19 pandemic. The notice provided for the Union to request a meet and confer over the impacts of the modification to the work schedule of Dispatchers. The Union requested to meet and confer over the impacts of the implemented Dispatch Emergency Schedule. As such, the Parties have met and conferred over implementation of the Dispatch Emergency Schedule and agree as follows:

III. Dispatch Emergency Schedule, Application of MOU Overtime Rates

- A. The Parties agree that the criteria for payment of overtime as outlined in the MOU shall overlay onto the FLSA criteria for determining overtime and the MOU overtime rates as described in “§3.3 Compensation for Overtime Work” shall apply to the Dispatch Emergency Schedule.

IV. General Provisions

- A. This Side Letter will take effect immediately upon adoption by the City/MESA.
B. The written terms herein embody the entire Side Letter of Agreement between the Parties.

In witness hereof, this Side Letter of Agreement was ratified by the Union Membership and adopted by a vote of the City/MESA on _____, 2020.

For the Employer:

For the Union:

Christine Daniel, City Manager

Miroo Desai, President

Trish Raver, Human Resources Director

Ossee Desmangles, Business Representative

Emeryville/MESA and SEIU, Local 1021 MOU 2019-21

Gregory Ramirez, Labor Consultant

Approved as to Form:

DocuSigned by:

Michael Guina

Michael Guina...

City Attorney/Legal Counsel