




Berkeley Housing Authority

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Office of the Executive Director

Item 5E
NEW BUSINESS
March 12, 2015

To: Honorable Chairperson and
Members of the Berkeley Housing Authority
From: Tia M. Ingram, Executive Director 
Subject: Maximum Vacation Leave Accumulation

RECOMMENDATION

1. Approve a resolution acknowledging the liability associated with the vacation and some sick leave balances as of June 30, 2014 in the amount of \$181,201 that includes accrued vacation hours accumulated by the Executive Director, Finance Manager, Management Analyst and Accountant in excess of the Authority policy threshold of 320 hours per staff; and
2. Accept the Executive Director's plans for strengthening reporting and managing accrued vacation leave balances.

BACKGROUND

Housing Authority employees are represented by two bargaining unions: SEIU Local 1021, and Local One; two other employees (Executive Assistant and Executive Director) are unrepresented. All BHA employees are subject to BHA's Personnel Policy.

Vacation Accrual

BHA employee vacation accrual policy is a carryover from the benefits the City contracted for with SEIU and Local One and is as follows:

Years of Service	Authorized Annual Vacation (in work weeks)	Vacation Leave Credits (in workdays per month of service)	Vacation Leave Credits (in hours earned per month of svc.)
Through the first three years of service	2	.0833	6.667
Fourth through eleventh years of service	3	1.25	10
Twelfth through seventeenth years of	4	1.667	13.333

service			
Eighteenth through twenty-fourth years of service	5	2.083	16.667
Twenty-fifth year of service and each year thereafter	6	2.5	20

Maximum Accrual

Vacation is provided in large part in recognition of the need for employees to have compensated time away from work for rest and respite. Employees are allowed to defer vacation, recognizing that employees may, from time to time, plan a vacation that requires multiple weeks. Both MOUs and BHA’s Personnel Policies contain language establishing a threshold of 320 for accrued balances: *“Employees may defer vacation earned to a maximum cumulative total of eight (8) weeks. An employee who has attained maximum accumulation may be required to take all excess earned vacation or receive pay in lieu thereof at the option of the Authority.”*

In an effort to help monitor accruals, and avoid an unintentional accrual beyond 320 hours, the rules provide that Management advise all employees with 280 hours (as of October 1st) of the need to by December 31st, schedule vacation time to be taken by the last pay period in February of the following year to reduce the balance to no more than 320 hours.

Accrual in Excess of the Maximum

The only language in the MOUs and BHA’s Personnel Rules with regard to what happens when a balance exceeds the 320 hour maximum follows:

- a. *“The Authority shall require all employees to reduce their accrued vacation balances to no more than 320 hours, as of the last pay period in February of each year of this Agreement”*;
- b. *An employee who has attained maximum accumulation may be required to take all excess earned vacation or receive pay in lieu thereof at the option of the Authority”*; and
- c. *“If due to operational necessity, a department head denied an employee vacation leave and does not provide the employee with an alternate vacation date, and as a result causes the employee to exceed the three hundred twenty (320) vacation leave limit, said employee shall nonetheless be entitled to use that vacation leave in the next calendar year to the extent necessary to reduce their accrued vacation to not more than three hundred twenty (320) hours.”*

The policy is clear in that the employee does not forfeit the accrued hours, but neither document directs (or causes) the employee cease accruing leave.

STATUS

BHA’s small staff, in particular the three member management team, has been and continues to be heavily tasked over the past seven years to address a number of significant projects – including

completing the Corrective Action Plan (CAP) for the Section 8 Voucher Program, the Memorandum of Agreement (MOA) for the Public Housing program (2007-2014), and the multi-year public housing disposition project (2009-2014). Throughout the years, the focus was on completing the “next critical task.”

Notwithstanding use of the approximate annual vacation accrual in Fiscal Years 13 and 14, balances accrued in earlier years was not reduced sufficiently. As a result, a snapshot of leave balances as of June 30, 2014 reflects four employees with balances in excess of the maximum allowed:

Staff	Accrued Vac Hrs 6/30/14	Excess hours	Leave taken 7-12/14	Leave Balance 2/14/15	Approved Leave to be taken to net 320 hrs 6/30
Executive Director	1202.4219	882.42188	62	1268.14	TBD
Finance Manager	394.98875	74.98875	106	364.93	87
Management Analyst	376.36875	56.36875	152	313.81	35
Accountant II	360.03875	40.03875	94.62	323.36	54

- Our Auditor took note of the excess balances bringing two very important issues to our attention:
- 1) Failure reduce the balances by the last pay period in February (violation of policy); and
 - 2) The financial liability associated with the leave balances in excess of 320 hours as of June 30, 2014.

Through discussions, he understands and accepts that this unintended situation is the result of operational necessity and limited staffing, but considers the financial implication of this violation of policy (and liability) *material* in terms of the audit.

The Executive Director is responsible for personnel management; should have been aware of growing leave balances; should have addressed this situation; and proposes the following:

I. Fiscal Year Ending June 30, 2014

The Board approve a resolution acknowledging (a) the liability associated with the vacation leave balances as of June 30, 2014 in the amount of \$181,201 that includes accrued vacation hours accumulated by the Executive Director, Finance Manager, Management Analyst and Accountant in excess of the agency policy threshold of 320 hours per staff, and (b) that the accrual balance of the Executive Director will exceed the 320 hour threshold on June 30, 2015. Under this plan the accruals will not be reduced, and no employee will receive any cash in settlement of any of the hours. The audit may still include a comment or finding, but it allows BHA to avoid a “qualified” audit which would detract from the financial management of the Authority. (Attachment 1)

II. Fiscal Year Ending June 30, 2015

The Executive Director has worked with, and approved leave requests from the Finance Manager, Management Analyst and Accountant to reduce the accrued vacation leave to no more than 320 hours as of June 30, 2015 (in some cases, prior to the last pay period in February).

The situation involving the Executive Director is unique, and cannot be fully addressed by June 30th. A deadline of December 2017 is more realistic, through a combination of taking leave and pay in lieu of time. Several scenarios should be vetted with the Finance Committee to arrive at recommendation to the full Board that is equitable to the Executive Director, and in the best interest of the Authority.

III. Ongoing

There are at least two important reasons for carefully monitoring accrued leave: the health and well being of our employees, and limiting financial exposure of the agency. To ensure that the Board is aware of this situation, the Executive Director proposes the following important benchmarks:

- a. Reporting leave balances (and any plans for reduction) to the Finance Committee and Board in November (when the employee and union are also advised of any anticipated excess leave balance)
- b. Providing an updated leave balance report to the Finance Committee and Board in January, advising:
 - i. a plan for reducing balances to 320 by the final pay period in February, and again by June 30; or
 - ii. recommending a pay-out of some or all of the hours necessary to ensure the balance will not exceed 320 on June 30, on a case by case basis.

FINANCIAL IMPLICATIONS

There are no cost implications for the actions proposed. However, there could be some cash outlay if the Board subsequently authorizes payment to the Executive Director in-lieu of taking some of her accrued leave. NOTE: this liability is currently funded, so there would be no increase in the deficit this Fiscal Year. The same cannot be true for future payouts.

CONTACT PERSON

Tia Ingram, Executive Director (510) 981-5471
Jesy Yturralde, Finance Manager (510) 981-5488

Attachments:

1. Resolution
2. Excerpt from Local One – Memorandum of Understanding
3. Excerpt from SEIU 1021 – Memorandum of Understanding
4. Excerpt from BHA Personnel Rules

BERKELEY HOUSING AUTHORITY
RESOLUTION NO. 15-_____

ACKNOWLEDGING THE LIABILITY OF \$181,201 ASSOCIATED WITH ACCRUED VACATION AND SICK HOURS AS OF JUNE 30, 2014, INCLUDING VACATION LEAVE BALANCES OF THE EXECUTIVE DIRECTOR, FINANCE MANAGER, MANAGEMENT ANALYST AND ACCOUNTANT IN EXCESS OF 320 HOURS; AND, ACKNOWLEDGING THE EXECUTIVE DIRECTOR'S LEAVE BALANCE ON JUNE 30, 2015 IN EXCESS OF 320 HOURS AND THE ASSOCIATED LIABILITY AT THAT TIME.

WHEREAS, all Berkeley Housing Authority (BHA) employees are subject to a vacation accrual standard of 320 hours; and

WHEREAS, the Authority is responsible for monitoring accrued leave balances, and advising the employee and appropriate union in November of each year, if the employee's leave balance is 280 or greater; and

WHEREAS, the Authority is responsible for, within the needs of the organization, ensuring that employee leave balances not exceed 320 hours; and

WHEREAS, the Authority has the option of directing the employee to reduce the leave balance to 320 by taking time off, or receiving payment in lieu, at the sole discretion of the Authority; and

WHEREAS, four employees, including the Executive Director, had accumulated vacation leave balances in excess of 320 in February 2014, and again in June 2014; and

WHEREAS, such balances placed the Authority in violation of its own policy as of the June 30, 2014 Fiscal Year end; and

WHEREAS, the associated cost of said balances has been funded in previous years; and

WHEREAS, the Authority was in "shut-down" beginning December 23, 2014 and continuing through January 2, 2015 necessitating use of approximately 36 hours of vacation per each staff member; and

WHEREAS, the Executive Director anticipates a budget revision that will include the addition of two additional positions that will allow for a better distribution of duties; and

WHEREAS, the Executive Director has reached agreement with the Finance Manager, Management Analyst and Accountant to further reduce accrued leave to 320 hours by the last pay period in February, and no more than 320 hours as of June 30, 2015; and

WHEREAS, the Executive Director has, and will continue to implement policies and procedures to more closely monitor accrued balances to comply with provisions in the labor agreements and Authority Personnel rules to avoid accumulation of vacation leave balances in excess of 320 hours.

NOW THEREFORE BE IT RESOLVED THAT the Board of the Berkeley Housing Authority acknowledges that as of June 30, 2014, the Executive Director, Finance Manager, Management Analyst and Accountant all had accumulated vacation leave in excess of 320 hours.

FURTHER RESOLVED THAT the liability for the accumulated leave balances on June 30, 2014 320 hours is \$181,201.

FURTHER RESOLVED THAT the Executive Director has, in consultation with the Finance Manager, Management Analyst and Accountant, approved a plan to reduce the individual accumulated leave balance to 320 hours by June 30, 2015.

FURTHER RESOLVED THAT the Board acknowledges the Executive Director's accrued vacation leave may exceed 320 hours as of June 30, 2015.

FURTHER RESOLVED THAT the Board will work with the Executive Director to devise a means of reducing the accumulated leave balance, within the operational demands of her position, to no more than 320 hours, no later than December 31, 2017.

The foregoing Resolution was adopted by the Board of the Berkeley Housing Authority on March 12, 2015 by the following vote:

Ayes:

Noes:

Abstain:

Absent:

Attest: _____

Tia M. Ingram, Secretary

2014–2017 Memorandum Agreement**Berkeley Housing Authority****Local One**

entitled to a prorated vacation leave based upon the actual years of service with the Authority and upon the actual amount of time worked in the preceding calendar year.

17.5.2. For the purpose of computing length of service in determining eligibility for vacation at the two (2), three (3), four (4), five (5) or six (6) weeks' rate, time spent on extended military leave shall be counted as time spent in the service of the Authority.

17.6. Holidays During Scheduled Vacation

In the event one or more municipal holidays fall within a vacation leave, such holidays shall not be charged as vacation leave, but rather coded "45" holiday.

17.7. Maximum Accumulation

Employees may defer vacation earned to a maximum cumulative total of eight (8) weeks. An employee who has attained maximum accumulation may be required to take all excess earned vacation or receive pay in lieu thereof at the option of the Authority. Not later than October 1 of each year, the Authority will advise employees who have attained a maximum accumulation of vacation whether such excess earned vacation must be scheduled as time off prior to the end of the year. Such time off shall be scheduled in accordance with the provision of Section 17.2.

The Authority shall require all employees to reduce their accrued vacation balances to no more than 320 hours, as of the last pay period in February of each year of this Agreement. To effectuate the requirement that employees not accrue more than 320 hours vacation leave, the parties agree that not later than November 15 of each year of this Agreement, the Authority will provide the Union with a report identifying all employees who have accrued two hundred and eighty (280) hours of vacation leave and appear in danger of exceeding the 320 hour limit. Employees who have accrued 280 hours of vacation leave, as of that date, will be advised by their supervisor that they must take vacation leave to reduce their vacation leave accrual by February of the following year.

Supervisors should be flexible in granting employee vacation requests to those employees above, or approaching the 320 hours limit, and further, that with regard to employees who are in danger of exceeding the 320 hour limit, no vacation request by such an employee shall be unreasonably denied. If an employee who is in danger of exceeding the 320 hour limit fails by December 31 of each year of this Agreement to schedule a vacation to be taken before the last pay period in February of each year of this Agreement, the Authority has the authority to direct the employee to go on vacation leave to reduce the employee's accrued vacation.

If, due to operational necessity, a department head denies an employee vacation leave and does not provide the employee with an alternate vacation date, and as a result causes the employee to exceed the 320 vacation leave limit, said employee shall nonetheless be entitled to use that vacation leave in the next calendar year to the extent necessary to reduce their accrued vacation

2014–2017 Memorandum Agreement

Berkeley Housing Authority

Local One

to not more than 320 hours.

17.8. Effect of Military Leave Or Break In Service

An employee who has returned from extended military leave or any other extended leave of absence without pay or who has been reemployed or reinstated shall be entitled, during the calendar year in which the employee returns to the Authority service, to a prorated vacation based upon the total years of service with the Authority and upon the total number of months of actual service with the Authority during the said calendar year. For succeeding calendar years, vacation shall be as provided in this Section 17.

17.9. Payment / Reimbursement Upon Termination or Extended Leave

If after six (6) months of continuous service, an employee is terminated, or is granted an extended military leave or other extended leave of absence without pay, such employee or his or her estate shall be paid for vacation credits in excess of the actual amount of vacation leave taken or such employee or his or her estate shall reimburse the Authority for the actual amount of vacation taken in excess of vacation leave credits, as the case may be.

Upon termination, extended military leave or other extended leave of absence without pay, vacation leave credits shall be totaled, and the actual amount of vacation leave taken, including any that may have been taken during the year in which the termination, extended military leave or other extended leave of absence without pay occurs, shall be deducted from the total credits.

If the credits exceed the actual amount of vacation leave taken such employee or his or her estate shall be paid for the excess of credits on the basis hereinafter set forth. If the actual amount of vacation leave taken exceeds the credits, such employee or his or her estate shall reimburse the Authority on the same basis.

The basis for such payment by the Authority or for such reimbursement to the Authority shall be as follows:

The employee's normal hourly rate at date of termination, extended military leave or other extended leave of absence without pay, and multiplied by the number of vacation hours accrued but not used.

Upon termination, extended military leave or other extended leave of absence without pay, payment for excess of vacation leave credits shall be made in a lump sum at time of termination, extended leave without pay, or as soon thereafter as possible; provided, however, that an employee may elect to use excess vacation leave credits prior to termination, extended military leave or other extended leave of absence without pay, to the extent permitted by this Section 17 and receive a lump sum payment for the balance of vacation leave credits, if any. Notwithstanding the foregoing, accumulated but unused vacation credit at the time of retirement shall be paid off in a lump sum.

2012–2014 Memorandum Agreement
Berkeley Housing Authority

SEIU Local 1021

17.7. Maximum Accumulation

Employees may defer vacation earned to a maximum cumulative total of eight (8) weeks. An employee who has attained maximum accumulation may be required to take all excess earned vacation or receive pay in lieu thereof at the option of the Authority. Not later than October 1 of each year, the Authority will advise employees who have attained a maximum accumulation of vacation whether such excess earned vacation must be scheduled as time off prior to the end of the year. Such time off shall be scheduled in accordance with the provision of Section 17.2.

The Authority shall require all employees to reduce their accrued vacation balances to no more than 320 hours, as of the last pay period in February of each year of this Agreement. To effectuate the requirement that employees not accrue more than 320 hours vacation leave, the parties agree that not later than November 15 of each year of this Agreement, the Authority will provide the Union with a report identifying all employees who have accrued two hundred and eighty (280) hours of vacation leave and appear in danger of exceeding the 320 hour limit. Employees who have accrued 280 hours of vacation leave, as of that date, will be advised by their supervisor that they must take vacation leave to reduce their vacation leave accrual by February of the following year.

Supervisors should be flexible in granting employee vacation requests to those employees above, or approaching the 320 hours limit, and further, that with regard to employees who are in danger of exceeding the 320 hour limit, no vacation request by such an employee shall be unreasonably denied. If an employee who is in danger of exceeding the 320 hour limit fails by December 31 of each year of this Agreement to schedule a vacation to be taken before the last pay period in February of each year of this Agreement, the Authority has the authority to direct the employee to go on vacation leave to reduce the employee's accrued vacation.

If, due to operational necessity, a department head denies an employee vacation leave and does not provide the employee with an alternate vacation date, and as a result causes the employee to exceed the 320 vacation leave limit, said employee shall nonetheless be entitled to use that vacation leave in the next calendar year to the extent necessary to reduce their accrued vacation to not more than 320 hours.

17.8. Effect of Military Leave Or Break In Service

An employee who has returned from extended military leave or any other extended leave of absence without pay or who has been reemployed or reinstated shall be entitled, during the calendar year in which the employee returns to the Authority service, to a prorated vacation based upon the total years of service with the Authority and upon the total number of months of actual service with the Authority during the said calendar year. For succeeding calendar years, vacation shall be as provided in this Section 17.

8-6 HOLIDAYS DURING SCHEDULED VACATION

In the event one (1) or more municipal holidays fall within a vacation leave, such holidays shall not be charged as vacation leave, and the vacation leave shall be extended accordingly. The provisions of this Section shall not apply to those positions in which holidays, due to the necessities of public health and safety, are normal working days.

8-7 MAXIMUM ACCUMULATION

Employees may defer vacation earned to a maximum cumulative total of eight (8) weeks. An employee who has attained maximum accumulation may be required to take all excess earned vacation or receive pay in lieu thereof at the option of the BHA. Not later than October 1 of each year, the BHA will advise employees who have attained a maximum accumulation of vacation whether such excess earned vacation must be scheduled as time off prior to the end of the year. Such time off shall be scheduled in accordance with the provision of Section 8.2.

The BHA shall require all employees to reduce their accrued vacation balances to no more than three hundred twenty (320) hours, as of the last pay period in February of each year of this Agreement. To effectuate the requirement that employees not accrue more than three hundred twenty (320) hours vacation leave, the parties agree that not later than November 15 of each year of this Agreement, the BHA will provide Local 1021 – Services Employees International Union (the “Union”) with a report identifying all Union employees who have accrued two hundred and eighty (280) hours of vacation leave and appear in danger of exceeding the three hundred twenty (320) hour limit. Employees who have accrued two hundred and eighty (280) hours of vacation leave, as of that date, will be advised by their supervisor that they must take vacation leave to reduce their vacation leave accrual by February of the following year.

Supervisors should be flexible in granting employee vacation requests to those employees above, or approaching the three hundred twenty (320) hours limit, and further, that with regard to employees who are in danger of exceeding the three hundred twenty (320) hour limit, no vacation request by such an employee shall be unreasonably denied. If an employee who is in danger of exceeding the three hundred twenty (320) hour limit fails by December 31 of each year of this Agreement to schedule a vacation to be taken before the last pay period in February of each year of this Agreement, the BHA has the authority to direct the employee to go on vacation leave to reduce the employee’s accrued vacation.

If, due to operational necessity, a department head denies an employee vacation leave and does not provide the employee with an alternate vacation date, and as a result causes the employee to exceed the three hundred twenty (320) vacation leave limit, said employee shall nonetheless be entitled to use that vacation leave in the next calendar year to the extent necessary to reduce their accrued vacation to not more than three hundred twenty (320) hours.