



Berkeley Housing Authority

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Office of the Executive Director

Item 6E
NEW BUSINESS
January 11, 2018

To: Honorable Chairperson and
Members of the Berkeley Housing Authority

From: William E. Wilkins, Executive Director

Subject: Workers' Compensation Resolution for Governing Body Member and/or Volunteer Coverage

RECOMMENDATION

Adopt a Resolution declaring that Governing Body members and volunteers shall be deemed to be employees of the District for the purpose of providing Workers' Compensation coverage for said certain individuals while providing their services to the Berkeley Housing Authority.

BACKGROUND

The Berkeley Housing Authority (BHA) was established as an independent governmental entity on May 22, 2007 through the adoption of Resolution 63,692-N.S by the Berkeley City Council. BHA then worked with the City of Berkeley insurance broker for the procurement of its own comprehensive program of insurance for the agency and Board of Commissioners. However, no private insurer was willing to cover a housing authority as a stand-alone entity. The insurance broker recommended that BHA join the Special District Risk Management Authority (SDRMA), which is open to any public entity in California that is a member of the California Special District Association. Thus, on July 23, 2007, the BHA Board of Commissioners adopted the execution of a Sixth Amended Joint Powers of Agreement relating to the Special District Management Authority authorizing BHA's participation in the SDRMA's property and liability program, and membership in the California Special Districts Association, a requirement for the participation in the SDRMA programs. The program coverage includes among other things: general liability, auto liability, property, boiler and machinery, public officials' errors and omissions, employment practices liability, employe benefit liability coverage, employee dishonesty coverage, and workers' compensation.

STATUS

On December 4, 2017 we received a letter from SDRMA (Attachment 2) notifying us that insurance carriers are requiring SDRMA Workers' Compensation members to pass a new Resolution if they would like to continue coverage for their Board of Commissioners/Governing Body members and/or volunteers.

Section 3363.5 of the California Labor Code provides that a person who performs voluntary service for a public agency as designated and authorized by the Governing Body of the agency or its designee, shall, upon adoption of a Resolution by the Governing Body of the agency so declaring, be deemed to be an employee for workers' compensation purposes. Thus, if such resolution is adopted, and the volunteer is injured while performing duties for the agency, the volunteer is entitled to

receive workers' compensation benefits and their exclusive remedy for recovery against the agency is through the Workers' Compensation system.

FINANCIAL IMPLICATIONS

None. The BHA Board of Commissioners are already covered in the existing BHA insurance plan including Workers' Compensation.

Attachments:

1. Resolution (SDRMA required format)
2. Letter from SDRMA dated November 30, 2017

RESOLUTION NO. 18-

RESOLUTION OF THE GOVERNING BODY OF
THE BERKELEY HOUSING AUTHORITY
DECLARING THAT GOVERNING BODY MEMBERS AND VOLUNTEERS SHALL BE
DEEMED TO BE EMPLOYEES OF THE DISTRICT FOR THE PURPOSE OF PROVIDING
WORKERS' COMPENSATION COVERAGE FOR SAID CERTAIN INDIVIDUALS WHILE
PROVIDING THEIR SERVICES.

WHEREAS, the Berkeley Housing Authority utilizes the services of the Governing Body Members and Volunteers; and

WHEREAS, Section 3363.5 of the California Labor Code provides that a person who performs voluntary service for a public agency as designated and authorized by the Governing Body of the agency or its designee, shall upon adoption of a resolution by the Governing Body of the agency so declaring, be deemed to be an employee of the agency for the purpose of Division 4 of said Labor Code while performing such services; and

WHEREAS, Special District Risk Management Authority was formed in 1986 in accordance with the provisions of California Government Code 6500 *et seq.*, for the purpose of providing its members with risk financing and risk management programs; and

WHEREAS, the Governing Body wishes to extend Workers' Compensation coverage as provided by State law to the following designated categories of persons as indicated by a checkmark in the box to the left of the descriptions; and

- All Members of the Governing Body of the Berkeley Housing Authority as presently or hereafter constituted and/or
- All persons performing voluntary services without pay other than meals, transportation, lodging or reimbursement for incidental expenses
- Individuals on Work-study programs
- Interns
- Other Volunteers
- _____
[designate]

NOW THEREFORE, BE IT RESOLVED, that such persons coming within the categories specified above, including the duly elected or appointed replacements of any Governing Body Member and other designated individuals be deemed to be employees of the Berkeley Housing Authority for the purpose of Workers' Compensation coverage as provided in Division 4 of the Labor Code while performing such service. However, said Governing Body Members and such Workers' Compensation coverage, or grant nor enlarge upon any other right, duty, or responsibility of such Governing Body Members or other designated individuals, nor allow such persons to claim any other benefits or rights given to paid employees of the Berkeley Housing Authority.

PASSED, APPROVED AND ADOPTED this _____ by the following

Vote:

Ayes:

Noes:

Absent:

Carole Norris, Chairperson
Berkeley Housing Authority

APPROVED AS TO FORM:



BERKELEY HOUSING
AUTHORITY

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November 30, 2017

2017 DEC 4 PM 4 11

Ms. Jesy Yturalde
Finance Manager
Berkeley Housing Authority
1936 University Avenue, Suite 150
Berkeley, California 94704

Re: Workers' Compensation Resolution for Governing Body Member and/or Volunteer Coverage

Dear Ms. Yturalde,

Recently our excess carrier has made us aware that SDRMA Workers' Compensation (WC) members need to pass a **new Resolution** if they would like to continue (or start) covering their Governing Body members and/or volunteers.

Section 3363.5 of the California Labor Code provides that a person who performs voluntary service for a public agency as designated and authorized by the Governing Body of the agency or its designee, shall, upon adoption of a Resolution by the Governing Body of the agency so declaring, be deemed to be an employee for workers' compensation purposes. Thus, if such a resolution is adopted, and the volunteer is injured while performing duties for the agency, the volunteer is entitled to receive workers' compensation benefits and their exclusive remedy for recovery against the agency is through the Workers' Compensation system.

Such Governing Body members and/or volunteers may be covered for workers' compensation benefits only if a Resolution to that effect is adopted by the Governing Body pursuant to Labor Code § 3363.5 and a copy of the Resolution is filed with SDRMA.

A new Resolution (see attached) has been created by our coverage counsel. The Resolution permits your Governing Body to designate the various categories of persons who the agency desires to "deem" to be employees for purposes of workers' compensation. It declares, on a blanket basis, that the designated categories of volunteers are deemed employees and those categories consist of Governing Body Members, persons performing voluntary service, persons on work study, interns, and other volunteers. In addition, those so designated persons also need to be listed under our Workers' Compensation Program (which includes paying an annual contribution amount) to enable coverage.

When using the sample Resolution provided, please do not make any changes other than the areas highlighted in yellow. **To ensure accurate and timely implementation of your Resolution, please return your Governing Body approved Workers' Compensation Resolution as soon as possible by fax or email.** A Microsoft Word version of the sample Resolution can be downloaded at <http://www.sdrma.org/program-coverages/workers-compensation-program>. If your agency has any questions please contact Ellen Doughty, Chief Member Services Officer, at 800.537.7790 or edoughty@sdrrma.org.

Sincerely,
Special District Risk Management Authority


Gregory S. Hall, ARM
Chief Executive Officer

Enclosures: Sample Resolution for Covering Governing Body and/or Volunteers

RESOLUTION No. XXXXXXXX

**RESOLUTION OF THE GOVERNING BODY OF
THE AGENCY NAME
DECLARING THAT GOVERNING BODY MEMBERS AND VOLUNTEERS SHALL
BE DEEMED TO BE EMPLOYEES OF THE DISTRICT FOR THE PURPOSE OF
PROVIDING WORKERS' COMPENSATION COVERAGE FOR SAID CERTAIN
INDIVIDUALS WHILE PROVIDING THEIR SERVICES**

WHEREAS, the Agency Name utilizes the services of Governing Body Members and Volunteers; and

WHEREAS, Section 3363.5 of the California Labor Code provides that a person who performs voluntary service for a public agency as designated and authorized by the Governing Body of the agency or its designee, shall, upon adoption of a resolution by the Governing Body of the agency so declaring, be deemed to be an employee of the agency for the purpose of Division 4 of said Labor Code while performing such services; and

WHEREAS, the Governing Body wishes to extend Workers' Compensation coverage as provided by State law to the following designated categories of persons as indicated by a checkmark in the box to the left of the descriptions:

- All Members of the Governing Body of the Agency Name as presently or hereafter constituted and/or
- All persons performing voluntary services without pay other than meals, transportation, lodging or reimbursement for incidental expenses
- Individuals on Work-study programs
- Interns
- Other Volunteers
- _____
[designate]

NOW, THEREFORE, BE IT RESOLVED, that such persons coming within the categories specified above, including the duly elected or appointed replacements of any Governing Body Member and other designated individuals be deemed to be employees of the Agency Name for the purpose of Workers' Compensation coverage as provided in Division 4 of the Labor Code while performing such service. However, said Governing Body Members and other designated individuals will not be considered an employee of the Agency Name for any purpose other than for such Workers' Compensation coverage, nor grant nor enlarge upon any other right, duty, or responsibility of such Governing Body Members or other designated individuals, nor allow such persons to claim any other benefits or rights given to paid employees of the Agency Name.

PASSED, APPROVED AND ADOPTED this DATE by the following vote:

AYES:
NOES:
ABSENT:

Name, Chairperson
Agency Name

APPROVED AS TO FORM: