CHEVY CHASE VILLAGE
BOARD OF MANAGERS
JANUARY 12, 2015 MEETING

STAFF REPORT

TO: BOARD OF MANAGERS

FROM: SHANA R. DAVIS-COOK, VILLAGE MANAGER

DATE: 1/7/2015

SUBJECT: RESOLUTION NO. 01-01-15: AN ORDINANCE TO AMEND CHPATER 3, "PERSONNEL CODE", SEC. 3-9, "COMPENSATION" TO INCLUDE APPROVED LEAVE AS ACTUAL HOURS WORKED FOR THE CALCULATION OF OVERTIME.

Background

Pursuant to the Board's approval at your meeting on December 8, 2014 of a policy to include pre-approved leave in the calculation for overtime, attached please find an ordinance drafted by Counsel to amend Sec. 3-9 of the Village Personnel Code to reflect this change in policy.

As we discussed in December, the current ordinance limits eligibility for overtime to actual hours worked and holidays and does not account for pre-approved leave taken within a work period. This can result in a notable disparity between employees' compensation when required to work in excess of a normal daily shift during the same work period when leave was also taken within that same work period.

A frequent example of this occurs within our Public Works Department when personnel are required to report to work for winter weather or other storm-related deployments and may work well in excess of 24 hours straight to clear streets and sidewalks. If an employee also has pre-approved leave within the same work week, these leave hours are not counted toward their eligibility for overtime. (See the attached December 2014 Board Meeting staff report for an example.)

This change in policy mirrors how various other local municipalities calculate overtime. The ordinance also includes a reference to the "exempt" designation, which is a standard way to reference employees who are not automatically eligible for overtime.

Draft Motion

I move to APPROVE / DENY Resolution No. 01-01-15 AS DRAFTED / WITH THE FOLLOWING AMENDMENTS _____.

Attachments
Resolution No. 01-01-15
Staff Report, dated 12/3/2014

Resolution No.: 01-01-15

Introduced: 01-12-15

Adopted: _____

Effective: _____

BOARD OF MANAGERS

FOR

CHEVY CHASE VILLAGE, MD

SUBJECT: AN ORDINANCE TO AMEND CHAPTER 3, "PERSONNEL CODE", SEC. 3-9, "COMPENSATION" TO INCLUDE APPROVED LEAVE AS ACTUAL HOURS WORKED FOR THE CALCULATION OF OVERTIME

WHEREAS, §5-201 *et seq.* of the Local Government Article, Annotated Code of Maryland, authorizes the Board of Managers to adopt such ordinances as it deems necessary to assure the good government of Chevy Chase Village; to protect and preserve the rights, property and privileges of the Village; to preserve peace and good order; to secure persons and property from danger and destruction; and to protect the health, comfort and convenience of Village residents; and

WHEREAS, Section 77-14(a) of the Chevy Chase Village Charter authorizes the Board of Managers to adopt such ordinances as it may deem necessary for the safety and welfare of Chevy Chase Village; for the protection and preservation of Chevy Chase Village property, rights and privileges; for the preservation of peace and good order and for securing persons and property from violence, danger or destruction; and for the suppression and abatement of all nuisances; and

CAPS : Indicate matter added to existing law.
[~~Brackets~~] : Indicate matter deleted from law.
Asterisks * * * : Indicate matter remaining unchanged in existing law but not set forth in Ordinance
CAPS :Indicate matter added in amendment
[~~Brackets~~] :Indicate matter deleted in amendment

WHEREAS, after proper notice to the public, the Board of Managers conducted a public hearing at which it considered the following ordinance in public session assembled on the _____ day of _____, 2015; and

WHEREAS, certain Village employees are entitled to overtime for hours actually worked in excess of the normal work period, with the exception that actual hours worked does not include any leave taken during the work period; and

WHEREAS, especially in situations involving unplanned work force commitments, such as snow events, the current policy can produce significantly different overtime eligibility for employees; and

WHEREAS, the Board has determined that it is in the public interest, and in the interest of Village employees, to allow pre-approved leave to be included in the calculation of hours actually worked for overtime.

NOW THEREFORE, the Board of Managers of Chevy Chase Village does hereby adopt the following ordinance:

AN ORDINANCE TO AMEND CHAPTER 3, "PERSONNEL CODE", SEC. 3-9, "COMPENSATION" TO INCLUDE APPROVED LEAVE AS ACTUAL HOURS WORKED FOR THE CALCULATION OF OVERTIME

SECTION 1.

BE IT ORDAINED AND ORDERED this _____ day of _____, 2015, by the Board of Managers of Chevy Chase Village, acting under and by virtue of the authority granted to it by §5-201 *et seq.* of the Local Government Article, Annotated Code of Maryland, and Section 77-14 of the Village Charter that Chapter 3, "Personnel Code", Sec. 3-9, "Compensation" be repealed, re-enacted and amended to read as follows:

Sec. 3-9. Compensation.

(a) – (d) * * * *

(e) *Overtime.* Any employee, except those holding EXEMPT positions which are executive, administrative or professional in nature, shall be entitled to compensation at the rate of one and one-half (1 1/2) times the employee's normal rate of compensation for hours actually worked in excess of the normal work period. The normal work period shall be:

(1) a. *Nonpolice employees.* Forty (40) hours in a week period commencing Saturday and ending Friday.

b. *Police.* Eighty-six (86) hours in a two (2) calendar week period commencing Saturday and ending the second Friday thereafter.

(2) Actual hours worked shall include holidays AND PRE-APPROVED LEAVE [~~but shall not include any leave~~].

(3) Overtime hours worked must be authorized by the department head and approved by the Village Manager.

The Board of Managers by resolution may authorize overtime pay for EXEMPT executive, administrative and professional employees.

(f) * * * *

SECTION 2.

AND BE IT FURTHER ORDAINED AND ORDERED, this ____ day of _____, 2015, by the Board of Managers of Chevy Chase Village, acting under and by virtue of the authority granted to it by §5-201 *et seq.* of the Local Government Article, Annotated Code of Maryland, and Section 77-14 of the Village Charter that:

(1) If any part of provision of this ordinance is declared by a court of competent jurisdiction to be invalid, the part of provision held to be invalid shall not affect the validity of the ordinance as a whole or any remaining part thereof; and

(2) This ordinance shall take effect on the _____ day of_____, provided the same is posted at the Village Office for fourteen (14) days prior thereto.

CHEVY CHASE VILLAGE

_____

Michael L. Denger, Chairman
Board of Managers
Chevy Chase Village

ATTEST:

_____

Richard Ruda, Secretary

CHEVY CHASE VILLAGE
BOARD OF MANAGERS
DECEMBER 8, 2014 MEETING

STAFF REPORT

TO: BOARD OF MANAGERS

FROM: SHANA R. DAVIS-COOK, VILLAGE MANAGER

DATE: 12/3/2014

SUBJECT: PROPOSED FOR BOARD CONSIDERATION AND APPROVAL— OVERTIME COMPENSATION POLICY CHANGE

Background

Sec. 3-9 (e) (entitled, "Compensation") of the Village Personnel Code states, in part:

> *Overtime.* Any employee, except those holding positions which are executive, administrative or professional in nature, shall be entitled to compensation at the rate of one and one-half (1 1/2) times the employee's normal rate of compensation for hours actually worked in excess of the normal work period. The normal work period shall be:
>
> (1) a. *Nonpolice employees.* Forty (40) hours in a week period commencing Saturday and ending Friday.
>
> b. *Police.* Eighty-six (86) hours in a two (2) calendar week period commencing Saturday and ending the second Friday thereafter.
>
> (2) Actual hours worked shall include holidays but shall not include any leave.

The result of sub-section (a) is that non-police employees who are required to work hours in excess of their normal daily shift, are not eligible for overtime if they have pre-approved annual leave within the same work week that will equal less than 40 hours of actual work. A frequent example of this occurs in our Public Works Department.

Public Works personnel who are required to report to work for winter weather or other storm-related deployments may work well in excess of 24 hours straight to clear streets and sidewalks. If an employee also has pre-approved leave within the same work week, these leave hours are not counted toward their eligibility for overtime, however, the leave hours used are reduced by the additional hours worked during the work week. Here are a couple of examples:

EMPLOYEE A, WORK WEEK 1

Monday	0 hours (pre-approved annual/vacation leave)
Tuesday	0 hours (pre-approved annual/vacation leave)
Wednesday	16 hours
Thursday	12 hours
Friday	8 hours

Compensation: 36 hours worked + 4 hours annual leave taken (net of 12 additional hours worked) = 40 compensated hours.

EMPLOYEE B, WORK WEEK 1

Monday	8 hours
Tuesday	8 hours
Wednesday	16 hours
Thursday	12 hours
Friday	8 hours

Compensation: 52 hours worked (12 hours of which are at a rate of one and one-half (1 ½) times the employee's normal rate of compensation) = 58 compensated hours.

In this example, the discrepancy between Employee A's and Employee B's compensation is 18 hours. This policy results in a disparity in compensation that can appear like a penalization for taking leave.

Public Works Department Head Mr. Michael Younes has spent the past few months researching how other local jurisdictions compensate their employees in these circumstances. For starters, it should be noted that all of the Chevy Chase-area municipalities use contractors for snow clearing operations. To find similarly situated jurisdictions, Mr. Younes had to reach out to municipalities that, although much larger than the Village, use in-house personnel for snow clearing or other storm-response operations.

Mr. Younes spoke to the Public Works Directors for the Cities of College Park, Gaithersburg, Rockville, and Takoma Park. All of these jurisdictions use the same FLSA classification for overtime eligibility that the Village uses, EXCEPT, all of these jurisdictions factor pre-approved leave (annual/vacation, personal and sick) into the work week total.

The City of College Park's Public Works Director Mr. Robert Stumpff, who also currently serves as the President of the Maryland Municipal Public Works Officials Association, advised Mr. Younes that to Mr. Stumpff's knowledge, all Prince George's County municipalities that utilize in-house personnel for storm responses factor pre-approved leave into the overtime calculation.

Although the primary impetus of this policy change is the Public Works Department, other departments, including Communications and Administration, will be eligible for this change in policy if it is approved by the Board.

The fiscal impact of this policy change should be minimal and, if approved, does not presently require a budget amendment.

Requested for Board Action

I request that the Board approve a change to our policy for the calculation of overtime to include annual/vacation, sick and personal leave that has been approved in advance, effective immediately. This change will require an amendment to Sec. 3-9 (e) of the Personnel Code. If the Board approved this policy change, I request authorization to work with Counsel to draft the ordinance amendment for introduction and approval at the Board's January 2015 regular meeting.

Over the coming weeks, Mr. Younes and I will continue our review of other emergency response-related policies for essential personnel to determine if any other policy proposals should be advanced to the Board for consideration.

Draft Motion

I move to APPROVE / DENY amending the overtime eligibility policy for non-police employees to include annual/vacation, sick and personal leave that has been approved in advance, and to authorize Village Counsel to draft an ordinance regarding same.