



California Public Employees' Retirement System
Customer Account Services Division
Retirement Account Services
P.O. Box 942709
Sacramento, CA 94229-2709
TTY: (877) 249-7442
888 CalPERS (or 888-225-7377) phone • (916) 795-4166 fax
www.calpers.ca.gov

November 26, 2013

Christine Londo
126 E Via Vaquero
San Dimas, CA 91773-3345

COPY

Dear Ms. Londo:

The California Public Employees' Retirement System (CalPERS) recently completed a review of compensation reported on your behalf by the City of Walnut (City). CalPERS identified compensation that does not comply with the California Public Employees' Retirement Law (PERL).

The compensation in question are your monthly payrates in the amount of \$15,059.98 and \$15,511.77 that were reported by the City from November 2005 through November 2006 for your position as Interim City Manager while retaining your duties of Finance Director/City Treasurer.

These reported payments do not meet the definition of "payrate" as provided in Government Code (GC) §20636(b)(1).

GC §20636(b)(1) defines "payrate" in relevant part as:

"Payrate" means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules."

A reported payrate must also meet specific provisions in the California Code of Regulations (CCR) §570.5.

CCR §570.5 states:

"(a) For purposes of determining the amount of "compensation earnable" pursuant to Government Code Sections 20630, 20636, and 20636.1, payrate shall be limited to the amount listed on a pay schedule that meets all of the following requirements:

- (1) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;
- (2) Identifies the position title for every employee position;
- (3) Shows the payrate for each identified position, which may be stated as a single amount or as multiple amounts within a range;
- (4) Indicates the time base, including, but not limited to, whether the time base is hourly, daily, bi-weekly, monthly, bi-monthly, or annually;
- (5) Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
- (6) Indicates an effective date and date of any revisions;
- (7) Is retained by the employer and available for public inspection for not less than five years; and
- (8) Does not reference another document in lieu of disclosing the payrate.

(b) Whenever an employer fails to meet the requirements of subdivision (a) above, the Board, in its sole discretion, may determine an amount that will be considered to be payrate, taking into consideration all information it deems relevant including, but not limited to, the following:

- (1) Documents approved by the employer's governing body in accordance with requirements of public meetings laws and maintained by the employer;
- (2) Last payrate listed on a pay schedule that conforms to the requirements of subdivision (a) with the same employer for the position at issue;
- (3) Last payrate for the member that is listed on a pay schedule that conforms with the requirements of subdivision (a) with the same employer for a different position;
- (4) Last payrate for the member in a position that was held by the member and that is listed on a pay schedule that conforms to the requirements of subdivision (a) of a former CalPERS employer."

GC §20636(c) (1) defines "special compensation" in relevant part as:

"Special compensation of a member includes a payment received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions."

CCR §571(a)(3) defines "temporary upgrade pay" as:

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“Temporary Upgrade Pay – Compensation to employees who are required by their employer or governing board or body to work in an upgraded position/classification of limited duration.”

CalPERS made multiple attempts at retrieving a salary schedule and/or documents publicly approved by the governing body of the City identifying the payrate for your position of Interim City Manager, but was not provided with the requested information. The City provided a recommendation from Michael B. Montgomery, City Attorney, to the City Council stating that you were willing to retain your current Finance Director position, title, duties and salary and agreed to be compensated the additional sum of \$5,000 a month for performing the additional duties of City Manager. This document is not considered a publicly available pay schedule and cannot be used to verify your payrate. Even if the recommendation was considered to be a publicly available pay schedule, the additional sum of \$5,000 per month would not be considered payrate because it was not part of your normal monthly rate of pay that was paid to similarly situated members in the same group or class of employment, and you continued to work in your capacity as the Finance Director/City Treasurer while performing additional duties of the City Manager. Furthermore, the additional sum of \$5,000 would not be considered temporary upgrade pay because you did not assume the upgraded position. Instead, you performed some additional duties while remaining in your primary position of Finance Director/City Treasurer.

CalPERS' fiduciary responsibility to all of its participants and business partners dictates that CalPERS use only the amount approved by a publicly available pay schedule that complies with CCR §570.5 to calculate final compensation. Because the City has been unable to provide a salary schedule that complies with CCR §570.5, CalPERS is required to use the last payrates that were listed on a publicly available pay schedule by the City for your position of Finance Director/City Treasurer. Your final compensation period is being calculated using the payrate of \$12,325.99 per month and special compensation of \$434.16 per month.

You have the right to appeal the decision referred to in this letter if you desire to do so, by filing a written appeal with CalPERS, in Sacramento, within **thirty days of the date of the mailing of this letter**, in accordance with Government Code section 20134 and sections 555-555.4, Title 2, California Code of Regulations. An appeal, if filed, should set forth the factual basis and legal authorities for such appeal. A copy of the applicable statute and Code of Regulations sections are included for your reference. If you file an appeal, the Legal Office will contact you and handle all requests for information.

Your appeal will be set for hearing with the Office of Administrative Hearings (OAH). The assigned CalPERS attorney will contact you to coordinate a hearing date. Depending on the current caseload of the OAH and the assigned attorney,

the hearing date may be set several months after the case is opened. The OAH will typically offer its earliest available hearing date that meets the schedule of both parties.

If you choose not to be represented by an attorney, the assigned CalPERS lawyer will be in direct communication with you during the appeal process. If you do hire an attorney, please let CalPERS know immediately so our attorney can work directly with him or her.

Enclosed is an informational brochure on the General Procedures for Administrative Hearings.

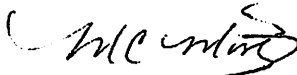
After the hearing is completed, the Administrative Law Judge will issue a Proposed Decision in approximately 30 days. The CalPERS Board of Administration will then make a determination whether to accept or reject that Proposed Decision. If the Board rejects the Proposed Decision, they will hold a Full Board Hearing in order to review the entire hearing record again before finalizing their decision.

Your appeal should be mailed to the following address:

KAREN DeFRANK, Division Chief
Customer Account Services Division
P.O. Box 942709
Sacramento, CA 94229-2709

If you have any questions or concerns regarding this matter, please contact Mary Peterson at 888 CalPERS (or 888-225-7377).

Sincerely,



TOMI JIMENEZ, Manager
Compensation and Employer Review
Customer Account Services Division

Enclosure

cc: KAREN DeFRANK
Gail Russell, City of Walnut