

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION**

Respondent Maria T. Santillan-Beas (Respondent) and the City of Lynwood (Respondent City; referred to collectively as Respondents) petition the Board of Administration to reconsider its decision to adopt the Administrative Law Judge's (ALJ) Proposed Decision dated February 3, 2022. For the reasons discussed below, Staff argues that the Board should deny Petition and uphold the Decision.

Respondent won election as a councilmember to the city council for Respondent City in 2003. While serving as a councilmember, Respondent City paid Respondent a regular monthly rate of pay, or payrate. In addition to her regular monthly payrate, Respondent also received compensation for serving on various boards and authorities for Respondent City as part of her councilmember duties. Respondent earned a different per diem rate for attending the meetings for the various boards and authorities, and her per diem earnings fluctuated because the number of meetings she attended while at Respondent City regularly fluctuated. Respondent's highest year of per diem meeting earnings was in 2004, but she did not pay contributions on those per diem earnings. Respondent paid contributions on her regular payrate throughout her councilmember service for Respondent City.

When Respondent retired in 2018, CalPERS excluded Respondent's per diem earnings from the calculation of her final compensation for two reasons. First, Government Code section 20322(d)<sup>1</sup> expressly excludes an elected officer's service on boards and authorities from CalPERS membership. CalPERS thus excluded Respondent's per diem earnings from her service on boards and authorities from her final compensation.

Second, CalPERS excluded the per diem earnings from Respondent's final compensation because those earnings did not meet section 20636's definitions of payrate or special compensation. The per diem earnings fluctuated month-to-month, and Respondent City did not list any per diem earnings on a publicly available pay schedule, so the earnings did not qualify as payrate. Plus, per diem earnings are not listed in California Code of Regulations, Title 2, section 571, so such pay cannot qualify as special compensation.

Respondents collectively appealed CalPERS' determination excluding the compensation, and the matter was heard by an ALJ at the Office of Administrative Hearings on November 16, 2021. After considering all the evidence and argument, the ALJ denied Respondents' appeals. The ALJ agreed that section 20322(d) precluded an elected officer's service for boards and authorities from CalPERS' membership. The ALJ also agreed that the per diem compensation did not qualify as payrate or special

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<sup>1</sup> All future statutory references will be to the Government Code unless otherwise noted.

compensation, which required CalPERS to exclude that compensation from Respondent's final compensation.

Respondents argue in their Petition that that the definition of payrate, and the pay schedule requirement, from section 20636 did not exist when Respondent first won election as a councilmember to Respondent City. Respondents then contend that all the per diem earnings should count towards Respondent's final compensation. Respondents are mistaken.

The ALJ already considered and rejected Respondents' arguments in the Proposed Decision. The ALJ found the requirement of having publicly available pay schedules is not new. Pay schedules were always a requirement under section 20636, which the legislature passed in 2006. Amendments to statutes that are matters of clarification may be applied retroactively as they were here. Therefore, in order for Respondent's 2004 payrate to qualify, her compensation must have been subject to a publicly available pay schedule in 2004 – which it was not. The ALJ reasoned that because payrate is limited to compensation listed on a publicly available pay schedule, and the disputed pay was never included on a pay schedule, Respondent's pay for attending various meetings cannot be considered payrate. Therefore, Respondent's pay for attending various meetings is properly excluded from CalPERS calculations of Respondent's final compensation for purposes of her retirement allowance.

Respondents also contend that adopting the Proposed Decision may adversely affect "the pension benefit earned by every other City employee." There was no evidence presented at hearing that Respondent City's other non-councilmember employees were paid on a per diem basis for attending meetings only required of councilmembers, and there was no evidence presented at hearing that any other employees could be adversely impacted by this matter. This statement is unsupported by any evidence at hearing, so should be disregarded. The ALJ based his Proposed Decision on the correct statutory authority and established caselaw. Moreover, the Proposed Decision only applies to the calculation of final compensation of Respondent, and not to any other claimed Respondent City employees.

Respondents offer no new evidence that would alter the analysis of the ALJ. The Proposed Decision that was adopted by the Board at its March 2022 meeting was well reasoned and based on the credible evidence presented at hearing. The Petition should be denied.

April 19, 2022

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