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June 26, 2012

Employer Code: 1056  
CalPERS ID: 2376421225  
Job Number: P11-013

City of Clayton  
Gary A. Napper, City Manager  
6000 Heritage Trail  
Clayton, CA 94517-1250

Dear Mr. Napper:

Enclosed is our final report on the results of the public agency review completed for the City of Clayton. Your agency's written response, included as an appendix to the report, indicates agreement with the issues noted in the report, except for Findings 1 and 3. Based on the information contained in your agency's response pertaining to these findings, we changed our recommendation for Finding 1, and we expanded Finding 3 to further clarify the issue. In accordance with our resolution policy, we have referred the issues identified in the report to the appropriate divisions at CalPERS. Please work with these divisions to address the recommendations specified in our report. It was our pleasure to work with your agency and we appreciate the time and assistance of you and your staff during this review.

Sincerely,

Original Signed by Margaret Junker  
MARGARET JUNKER, Chief  
Office of Audit Services

Enclosure

cc: Risk and Audit Committee Members, CalPERS  
Peter Mixon, General Counsel, CalPERS  
Karen DeFrank, Chief, CASD, CalPERS  
Mary Lynn Fisher, Chief, BNSD, CalPERS  
Honorable Board Members, City of Clayton

# **Office of Audit Services**



## **Public Agency Review**

### **City of Clayton**

**Employer Code: 1056**  
**Job Number: P11-013**

**June 2012**

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# CITY OF CLAYTON

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## TABLE OF CONTENTS

<u>SUBJECT</u>	<u>PAGE</u>
Results in Brief.....	1
City Background.....	1
Scope.....	2
Office of Audit Services Review Results .....	3
Finding 1: Publicly Available Pay Schedule.....	3
Finding 2: Special Compensation .....	5
Finding 3: Retroactive Salary .....	6
Finding 4: Part-Time Employees .....	7
Finding 5: Unused Sick Leave.....	8
Conclusion .....	9
CalPERS Background.....	Appendix A
Objectives .....	Appendix B
Criteria .....	Appendix C
City's Written Response .....	Appendix D

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# CITY OF CLAYTON

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## RESULTS IN BRIEF

The Office of Audit Services (OAS) reviewed the City of Clayton's enrolled individuals, member compensation, required health and retirement information and other documentation for individuals included in test samples. A detail of the findings is noted in the Results section beginning on page three of this report. Specifically, the following findings were noted during the review:

- Payrate was not listed on a publicly available pay schedule.
- Special compensation (POST Pay) was included in base payrate and regular earnings.
- Retroactive salary adjustment was incorrectly reported.
- Eligible part-time employees were not enrolled in CalPERS membership.
- Unused sick leave balance was not certified to CalPERS.

The pertinent sections of the California Government Code and California Code of Regulations for each finding are listed in Appendix C.

## CITY BACKGROUND

The City of Clayton was formed in 1964 under the council-manager form of government and is governed by a five-member Board of Directors. The City's major operations include police services and road maintenance. Memoranda of Understanding (MOU) and employment agreements outline all City employees' salaries and benefits and state the terms of employment agreed upon between the City and its employees.

The City contracted with CalPERS effective July 1, 1975, to provide retirement benefits for miscellaneous and police employees. The City provides a three year final compensation period for all coverage groups. The City contracted with CalPERS effective July 1, 1998, to provide health benefits to all eligible employees.

All contracting public agencies, including the City, are responsible for the following:

- Determining CalPERS membership eligibility for its employees.
- Enrolling employees into CalPERS upon meeting membership eligibility criteria.
- Enrolling employees in the appropriate membership category.
- Establishing the payrates for its employees.
- Approving and adopting all compensation through its governing body in accordance with requirements of applicable public meeting laws.
- Publishing all employees' payrates in a publicly available pay schedule.
- Identifying and reporting compensation during the period it was earned.

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# CITY OF CLAYTON

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- Ensuring special compensation is properly identified and reported.
- Reporting payroll accurately.
- Notifying CalPERS when employees meet Internal Revenue Code annual compensation limits.
- Ensuring the employment of a retired annuitant is lawful and reinstating retired annuitants that work more than 960 hours in a fiscal year.
- Ensuring only eligible members and their dependents are enrolled for health coverage.
- Keeping accurate and up to date records of all health enrollment related information such as enrollment forms, parent-child relationship affidavits, divorce decrees, and other documentation.

## SCOPE

As part of the Board approved plan for fiscal year 2011/2012, the OAS reviewed the City's payroll reporting and member enrollment processes as these processes relate to the City's retirement and health contracts with CalPERS. The review period was limited to the examination of sampled records and processes from July 1, 2008, through June 30, 2011. The on-site fieldwork for this review was conducted on November 28, 2011, through December 2, 2011. The review objectives and a summary of the procedures performed, sample sizes, sample periods and findings are listed in Appendix B.

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# CITY OF CLAYTON

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## OFFICE OF AUDIT SERVICES REVIEW RESULTS

**Finding 1:** The City did not include all payrates on a publicly available pay schedule.

### **Recommendation:**

No further action is needed as, effective fiscal year 2010/2011, the City began disclosing all employee payrates on a publicly available pay schedule that meet the requirements of Government Code 20636(b)(1) and California Code of Regulations §570.5.

### **Condition:**

We reviewed the payrates reported to CalPERS for a sample of 16 employees to determine whether payrates were approved and listed on a publicly available pay schedule. Our testing revealed that the City correctly approved and reported payrates except in one instance. Specifically, the City Manager's payrate was not listed in a pay schedule available for public scrutiny. The City Council special meeting minutes dated December 4, 2006, approved a monthly payrate of \$13,900 for the City Manager. Subsequent council meeting minutes stipulated the percentage payrate increases, but did not list the City Manager's payrate amount. Instead, the council special meeting minutes dated December 3, 2007, approved a 4 percent cost-of-living salary adjustment and 3.914 percent performance merit increase effective November 1, 2007, and the meeting minutes dated November 12, 2008, approved a 2 percent cost-of-living salary adjustment effective October 29, 2008.

Although the payrate increases given to the City Manager during our review period were approved by the City Council and in accordance with the City Manager's employment agreement, OAS determined the payrate amount was not publicly disclosed or transparent to the public, nor was it listed on a publicly available pay schedule. However, it is noted that the City started listing the City Manager's payrate on a pay schedule, along with posting the pay schedule on the City's website during fiscal year 2010/2011.

Per Government Code Section 20636, an employee's payrate is the base pay pursuant to publicly available pay schedules and shall be public records available for public scrutiny. Section 570.5 of California Code of Regulations, which became effective August 10, 2011, clarified existing law and made specific the requirements

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# CITY OF CLAYTON

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for “publicly available pay schedule” as that phrase is used in the definition of payrate.

**Criteria:**

Government Code § 20636(b)(1)  
California Code of Regulations § 570.5

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# CITY OF CLAYTON

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**Finding 2:** The City included special compensation in the base payrate and regular earnings.

## **Recommendations:**

The City should immediately begin reporting items of special compensation separately from base payrate and regular earnings.

OAS recommends CASD work with the City to ensure special compensation is reported separately and not included in payrates. CASD should work with the City to assess the impact of this incorrect reporting and determine what adjustments, if any, are needed.

## **Condition:**

One sampled employee was awarded the Post Officer Standards and Training (POST) Intermediate Certificate and was eligible for an annual educational incentive pay in the amount of \$1,200, per the Police Officers' Association Memorandum of Understanding. The employee's approved hourly payrate effective January 1, 2009, was \$34.48. In sampled service periods 11/10-4 and 6/11-3, the City paid and reported an hourly payrate of \$35.03, which included \$0.55 POST pay. The City should have reported POST pay separately as special compensation.

A second sampled employee also received the annual \$1,200 POST Intermediate Certificate pay. The employee's approved hourly payrate effective July 1, 2008, was \$37.45. In service period 7/08-3, the City paid and reported an hourly payrate of \$38.00, which included \$0.55 POST pay. The City should have reported POST pay separately as special compensation.

## **Criteria:**

Government Code § 20636(a), § 20636(b)(1), § 20636(c)(1), § 20636(c)(2)



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# CITY OF CLAYTON

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**Finding 3:** The City reported a retroactive salary adjustment using an incorrect payrate.

**Recommendation:**

The City should ensure that the correct payrate is reported to CalPERS when reporting a retroactive pay increase.

OAS recommends CASD work with the City to ensure retroactive adjustments are reported correctly. CASD should work with the City to assess the impact of this incorrect reporting and determine what adjustments, if any, are needed.

**Condition:**

One sampled employee's payrate was increased from \$86.54 per hour to \$88.27 per hour due to a 2% cost-of-living salary adjustment effective October 29, 2008. In service period 11/08-3, the City reported a retroactive salary adjustment using an incorrect hourly payrate of \$41.52. When reporting a retroactive salary adjustment, the service period should reflect the earliest service period involved in the adjustment. The transaction should have the member's new payrate (\$88.27) and the total additional earnings (\$41.52) for the period; i.e., report the difference in earnings as the earnings and the new payrate as the payrate. Therefore, the City should have used an hourly payrate of \$88.27 to reflect the new payrate when reporting the retroactive salary adjustment.

**Criteria:**

Government Code § 20636 (b)(1)

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# CITY OF CLAYTON

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**Finding 4:** The City did not enroll temporary/part-time employees into membership when CalPERS eligibility requirements were met.

**Recommendation:**

The City should review and monitor all hours worked in a fiscal year by all temporary/part-time employees and enroll those that meet membership eligibility criteria.

OAS recommends CASD work with the City to ensure employees are enrolled into membership when membership eligibility requirements are met. CASD should work with the City to access the impact of this membership enrollment issue and determine what adjustments are needed.

**Condition:**

The City hired employees to work in part-time (Limited Service) positions. The City did not enroll or timely enroll into CalPERS membership two sampled part-time employees who qualified for membership by working 1,000 hours in a fiscal year. Specifically,

- One employee worked 1,045.50 hours in fiscal year 2009/2010 and exceeded 1,000 hours worked in the pay period ending January 24, 2010. This employee was not enrolled until March 2011.
- A second employee worked 1,001 hours in fiscal year 2010/2011 and exceeded 1,000 hours worked in the pay period ending February 20, 2011. This employee was not enrolled.

**Criteria:**

Government Code § 20028, § 20125, §20305(a)(1)(2)(3) and (3)(B), §20160

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# CITY OF CLAYTON

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**Finding 5:** The City did not certify the unused sick leave balance for a retired member.

**Recommendation:**

The City should review the unused sick leave balances for the members who retired during the review period to determine if unused sick leave balances were properly reported to CalPERS.

OAS recommends BNSD make the necessary adjustments to the retired member's retirement allowance.

**Condition:**

Retiring members are eligible for additional service credit for unused sick leave. The total number of unused sick leave hours at retirement is converted to days to determine additional service credit. The City is required to certify the additional days to CalPERS.

The City properly computed and reported unused sick leave for two of the three sampled retirees. However, one sampled member retired on December 29, 2008, with a total of 168.83 hours of unused sick leave that should have been converted to 21.10 days of additional service credit. The City did not report the balance of unused sick leave to CalPERS for additional service credit for this retiree.

**Criteria:**

Government Code § 20965, § 20160

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# CITY OF CLAYTON

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## CONCLUSION

OAS limited this review to the areas specified in the scope section of this report and in the objectives as outlined in Appendix B. OAS limited the test of transactions to employee samples selected from the City's payroll and health records. Sample testing procedures provide reasonable, but not absolute, assurance that these transactions complied with the California Government Code except as noted.

The findings and conclusions outlined in this report are based on information made available or otherwise obtained at the time this report was prepared. This report does not constitute a final determination in regard to the findings noted within the report. The appropriate CalPERS divisions will notify the agency of the final determinations on the report findings and provide appeal rights, if applicable, at that time. All appeals must be made to the appropriate CalPERS division by filing a written appeal with CalPERS, in Sacramento, within thirty days of the date of the mailing of the determination letter, in accordance with Government Code Section 20134 and Sections 555-555.4, Title 2, California Code of Regulations.

Respectfully submitted,

Original Signed by Margaret Junker  
MARGARET JUNKER, CPA, CIA, CIDA  
Chief, Office of Audit Services

Date: June 2012

Staff: Michael Dutil, CIA, Senior Manager  
Diana Thomas, CIA, CIDA, Manager  
Adeeb Alzanoon  
Nuntawan Camyre

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**CITY OF CLAYTON**

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# **APPENDIX A**

## **BACKGROUND**

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# CITY OF CLAYTON

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## BACKGROUND

### California Public Employees' Retirement System

The California Public Employees' Retirement System (CalPERS) provides a variety of programs serving members employed by more than 2,500 local public agencies as well as state agencies and state universities. The agencies contract with CalPERS for retirement benefits, with CalPERS providing actuarial services necessary for the agencies to fund their benefit structure. In addition, CalPERS provides services which facilitate the retirement process.

CalPERS Customer Account Services Division (CASD) manages contract coverage for public agencies and receives, processes, and posts payroll information. In addition, CASD provides eligibility and enrollment services to the members and employers that participate in the CalPERS Health Benefits Program, including state agencies, public agencies, and school districts. CalPERS Benefit Services Division (BNSD) sets up retirees' accounts, processes applications, calculates retirement allowances, prepares monthly retirement benefit payment rolls, and makes adjustments to retirement benefits.

Retirement allowances are computed using three factors: years of service, age at retirement and final compensation. Final compensation is defined as the highest average annual compensation earnable by a member during the last one or three consecutive years of employment, unless the member elects a different period with a higher average. State and school members use the one-year period. Local public agency members' final compensation period is three years unless the agency contracts with CalPERS for a one-year period.

The employer's knowledge of the laws relating to membership and payroll reporting facilitates the employer in providing CalPERS with appropriate employee information. Appropriately enrolling eligible employees and correctly reporting payroll information is necessary to accurately compute a member's retirement allowance.

# **APPENDIX B**

## **OBJECTIVES**

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# CITY OF CLATYON

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## OBJECTIVES

The objectives of this review were limited to the determination of:

- Whether the City complied with applicable sections of the California Government Code (Sections 20000 et seq.) and Title 2 of the California Code of Regulations.
- Whether prescribed reporting and enrollment procedures as they relate to the City's retirement and health benefits contracts with CalPERS were followed.

This review covers the period of July 1, 2008, through June 30, 2011.

## SUMMARY

### Procedures, Sample Sizes, Sample Periods, and Findings

To accomplish the review objectives, OAS interviewed key staff members to obtain an understanding of the City's personnel and payroll procedures, reviewed documents, and performed the following procedures. Related sample sizes, sample periods and findings are listed.

- ✓ Reviewed:
  - Provisions of the Contract and contract amendments between the City and CalPERS
  - Correspondence files maintained at CalPERS
  - City Council minutes and City Council resolutions
  - City written labor policies and agreements
  - City salary, wage and benefit agreements including applicable resolutions
  - City personnel records and employee hours worked records
  - City payroll information including Summary Reports and PERS listings
  - Other documents used to specify payrate, special compensation and benefits for all employees
  - Health Benefits Program enrollment records and supporting documentation
  - City ordinances as necessary
  - Various other documents as necessary
- ✓ Reviewed City payroll records and compared the records to data reported to CalPERS to determine whether the City properly reported compensation earnable to CalPERS.



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# CITY OF CLATYON

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Sample Size and Period: Reviewed 12 employees in two sampled service periods, the second service period in November 2010 (11/10-4) and the first service period in June 2011 (6/11-3).

## No Finding

- ✓ Reviewed payrates reported to CalPERS and reconciled the payrates to City public salary records to determine whether base payrates reported were accurate, pursuant to publicly available pay schedules that identify the position title, payrate and time base for each position, and duly approved by the City's governing body in accordance with requirements of applicable public meeting laws.

Sample Size and Period: Reviewed 12 employees in one sampled service period, the first service period in June 2011 (6/11-3) and one sampled employee over the scope of the review period.

**See Finding 1:** The payrate for one sampled employee was not listed on a publicly available pay schedule.

- ✓ Reviewed PERS listing reports to determine whether the following payroll reporting elements were reported correctly: contribution code, pay code, work schedule code, service period, and member contributions.

Sample Size and Period: Reviewed 12 employees in one sampled service period, the first service period in June 2011 (6/11-3).

## No Finding

Sample Size and Period : Reviewed 12 employees in two sampled service periods, the second service period in November 2010 (11/10-4) and the first service period in June 2011 (6/11-3).

**See Finding 2:** The City included special compensation (POST Pay) in the base payrate and regular earnings.

Sample Size and Period for finding 3: Reviewed one sampled employee over the scope of the review period..

**See Finding 3:** The City reported a retroactive salary adjustment using an incorrect payrate.

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# CITY OF CLATYON

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- ✓ Reviewed the City's enrollment practices for part-time employees to determine whether individuals met CalPERS membership requirements.

Sample Size and Period: Reviewed seven temporary/part-time employees in fiscal years 2009/2010 and 2010/2011.

**See Finding 4:** The City did not timely enroll part-time employees into membership when they reached 1,000 hours worked in a fiscal year.

- ✓ Reviewed the City's enrollment practices for retired annuitants to determine whether retirees were reinstated when 960 hours were worked in a fiscal year.

The City did not employ retired annuitants.

## **No Finding**

- ✓ Reviewed the City's enrollment practices pertaining to independent contractors to determine whether the individuals met CalPERS membership requirements.

No independent contractors were found that met the testing criteria and no further testing was performed.

## **No Finding**

- ✓ Reviewed the City's enrollment practices pertaining to affiliated parties to determine whether the individuals met CalPERS membership requirements.

The Authority did not employ employees related to affiliated parties.

## **No Finding**

- ✓ Reviewed the City's calculation and reporting of unused sick leave balances.

Sample Size and Period: Reviewed three retiring members covering the review period.

**See Finding 5:** The City did not certify the unused sick leave balance.

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# CITY OF CLATYON

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- ✓ Reviewed the City's health records to determine whether the City properly enrolled eligible individuals into CalPERS Health Benefits Program.

Sample Size and Period: Reviewed five employees and their dependents in the review period.

**No Finding**

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**CITY OF CLAYTON**

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# APPENDIX C

## CRITERIA

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# CITY OF CLAYTON

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## CRITERIA

Government Code § 20028, states, in part:

Employee means all of the following: (b) Any person in the employ of any contracting agency.

Government Code § 20125, states:

The board shall determine who are employees and is the sole judge of the conditions under which persons may be admitted to and continue to receive benefits under this system.

Government Code § 20160 states:

a) Subject to subdivisions (c) and (d), the board may, in its discretion and upon any terms it deems just, correct the errors or omissions of any active or retired member, or any beneficiary of an active or retired member, provided that all of the following facts exist:

(1) The request, claim, or demand to correct the error or omission is made by the party seeking correction within a reasonable time after discovery of the right to make the correction, which in no case shall exceed six months after discovery of this right.

(2) The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.

3) The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part. Failure by a member or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an "error or omission" correctable under this section.

(b) Subject to subdivisions (c) and (d), the board shall correct all actions taken as a result of errors or omissions of the university, any contracting agency, any state agency or department, or this system.

(c) The duty and power of the board to correct mistakes, as provided in this section, shall terminate upon the expiration of obligations of this system to the party seeking correction of the error or omission, as those obligations are defined by Section 20164.

(d) The party seeking correction of an error or omission pursuant to this section has the burden of presenting documentation or other evidence to the board establishing the right to correction pursuant to subdivisions (a) and (b).

(e) Corrections of errors or omissions pursuant to this section shall be such that the status, rights, and obligations of all parties described in subdivisions (a) and (b) are adjusted to be the same that they would have been if the act that would have been taken, but for the error or omission, was taken at the proper time. However, notwithstanding any of the other provisions of this section, corrections made pursuant to this section shall adjust the status,

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# CITY OF CLAYTON

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rights, and obligations of all parties described in subdivisions (a) and (b) as of the time that the correction actually takes place if the board finds any of the following:

- (1) That the correction cannot be performed in a retroactive manner.
- (2) That even if the correction can be performed in a retroactive manner, the status, rights, and obligations of all of the parties described in subdivisions (a) and (b) cannot be adjusted to be the same that they would have been if the error or omission had not occurred.
- (3) That the purposes of this part will not be effectuated if the correction is performed in a retroactive manner.

Government Code § 20305, subdivision (a)(1)(2) and (3)(B), states, in part:

(a) An employee whose appointment or employment contract does not fix a term of full-time, continuous employment in excess of six months is excluded from this system unless: (1) He or she is a member at the time he or she renders that service and is not otherwise excluded pursuant to this article or by a provision of a contract. (2) His or her position requires regular, part-time service for one year or longer for at least an average of 20 hours a week, or requires service that is equivalent to at least an average of 20 hours a week for one year or longer, unless he or she elects membership pursuant to Section 20325. (3) His or her employment is, in the opinion of the board, on a seasonal, limited-term, on-call, emergency, intermittent, substitute, or other irregular basis, and is compensated and meets one of the following conditions: (B) The person completes... 1000 hours within the fiscal year, in which case, membership shall be effective not later than the first day of the first pay period of the month following the month in which ...1000 hours of service were completed.

Government Code § 20636, subdivision (a), states:

Compensation earnable for a member as the payrate and special compensation of the member.

Government Code § 20636, subdivision (b)(1), states, in part:

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.

Government Code § 20636, subdivision (c)(1), states:

Special Compensation as any payment received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions.

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# CITY OF CLAYTON

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Government Code § 20636, subdivision (c)(2) states, in part:

Special compensation shall be limited to that which is received by a member pursuant to a labor policy or agreement ... to similarly situated members of a group or class of employment that is in addition to payrate.

Government Code § 20965, states, in part:

A local miscellaneous member and a local safety member, whose effective date of retirement is within four months of separation from employment with the employer which granted the sick leave credit, shall be credited at his or her retirement with 0.004 year of service credit for each unused day of sick leave certified to the board by his or her employer. The certification shall report only those days of unused sick leave that were accrued by the member during the normal course of his or her employment and shall not include any additional days of sick leave reported for the purpose of increasing the member's retirement benefit. Reports of unused days of sick leave shall be subject to audit and retirement benefits may be adjusted where improper reporting is found.

California Code of Regulation § 570.5, subdivision (a), states:

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; 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.

# APPENDIX D

## CITY'S WRITTEN RESPONSE

Note: The City provided attachments to the response which were intentionally omitted from this appendix.





# CITY OF CLAYTON

Founded 1857... Incorporated 1964

COMMUNITY  
DEVELOPMENT (925) 673-7340  
ENGINEERING (925) 363-7433

6000 HERITAGE TRAIL • CLAYTON, CALIFORNIA 94517-1250  
TELEPHONE (925) 673-7300 FAX (925) 672-4917

*City Council*  
HOWARD GELLER, MAYOR  
JOSEPH A. MEDRANO, VICE MAYOR  
JULIE K. PIERCE  
DAVID T. SHUEY  
HANK STRATFORD

18 June 2012

*SENT U.S. FIRST CLASS MAIL, OVERNIGHT DELIVERY*

Margaret Junker, Chief  
Office of Audit Services  
California Public Employees' Retirement System  
P O Box 942701  
Sacramento, CA 94229-2701

**RE: City of Clayton Response to Draft Public Agency Review Audit  
CalPERS ID: 2376421225**

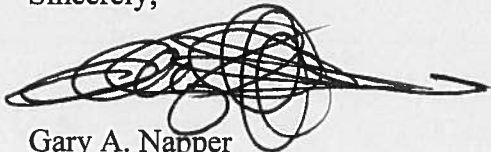
Dear Ms. Junker:

On 04 June 2012 the City of Clayton received a copy of a draft report by the CalPERS Office of Audit Services outlining its draft Findings of a field and office review of our public agency in relation to our contract(s) with the California Public Employees' Retirement System (CalPERS).

Our City has reviewed and evaluated the draft Findings contained therein and we are informed we may provide a written response by 20 June 2012. Following its critique, the City does indeed wish to provide a written response to the draft Findings. In that context, attached is the City of Clayton's response to the draft audit findings of our public agency review by CalPERS.

We look forward to resolving any questions or issues arising from this matter. Please share our City's response internally with Ms. Fisher, Chief of BNSD, CalPERS and with Ms. DeFrank, Chief of CASD, CalPERS.

Sincerely,



Gary A. Napper  
City Manager

Attachment: City of Clayton Response to Draft Audit Report by CalPERS [13 pp.]



**CITY RESPONSE**

**TO**

**DRAFT AUDIT FINDINGS**

**OF**

**CaIPERS PUBLIC AGENCY REVIEW**

DATE: 18 JUNE 2012

## **THE CITY OF CLAYTON**

The City of Clayton is a general law municipality incorporated in 1964. The City contracted with the California Public Employees Retirement System ("CalPERS") in July 1975 for the provision of public retirement benefits for its employees. Ever since its incorporation, the City has received limited public resources for staffing of its public organization. Since 2001 and at the time of the CalPERS Public Agency Review ("Audit"), the City employed a part-time Accounting Technician who, among a multitude of other duties, handled payroll functions for the City. In addition, its City Clerk, among a horde of other responsibilities, serves in limited capacity as the City's Human Resources Manager. The City's total number of permanent employees entitled to benefits is twenty-six (26), which count includes a local law enforcement department of thirteen (13).

Given the range and sheer quantity of statutes comprising the Public Employees Retirement Law, its regulations and other guidance issued by CalPERS, the City does its best to become familiar with, stay updated with and implement the host of applicable statutes involving a California municipality contracted with CalPERS. In addition, the City notes that this Audit was conducted following and during a recent heightened scrutiny of the compensation paid by and retirement benefits provided by California public agencies.

We would, however, like to express our appreciation for the level of professionalism demonstrated by CalPERS field staff during this process, and look forward to the final Audit Report and working with CalPERS to resolve any outstanding issues that remain after your consideration of the City's written response.

\* \* \* \* \*

### **FINDING 1**

*The City did not include all pay rates on a publicly available pay schedule.*

Much of the analysis contained in the "Condition" section of Finding 1 observes that the City complied with the applicable provisions of Section 20636 and notes that the City began listing the City Manager's payrate on a pay schedule and posted said schedule on the City's website *before* Section California Code of Regulations 570.5 became effective. Further, in an e-mail dated February 10, 2012 (enclosed herein as Attachment 1), CalPERS' Michael Dutil observed that regarding this subject the Audit revealed that "the City did not intend to hide anything, properly reported what was listed on documents that were provided to the auditor, did not "spike" any compensation . . . ." Nonetheless, the draft Audit Report concludes, we believe incorrectly and unjustly, that the City Manager's payrate "was not publicly disclosed or transparent to the public, nor was it listed on a publicly available pay schedule."

In order to effectively respond to the preceding proposed Finding, it is important for us to articulate the rules not only as they apply in this instance but as they existed during the period subject to the Audit. As it applies to a CalPERS member that is "not in a group or class," as is the case with the City Manager, the term "publicly available pay

schedule" appears in the definition of the term "payrate" at Section 20636(b)(1). Said provision defines "payrate" as the "monthly rate of pay or base pay of the member, paid in cash and pursuant to publicly available pay schedules, for services rendered on a full-time basis during normal working hours, subject to the limitations of paragraph (2) of subdivision (3)."<sup>1</sup> During the period subject to the Audit, the term "publicly available pay schedule" was not defined anywhere in the Public Employees Retirement Law. In fact, said definition did not exist until Section 570.5 of the California Code of Regulations become effective on August 10, 2011 which was adopted by the Board of Administration at the behest of the Actuarial & Employer Services Branch for the purpose of specifically identifying the elements necessary to satisfy the requirement that a payrate be paid pursuant to a "publicly available pay schedule."

Prior to the adoption of Section 570.5, CalPERS employers had no guidance available to them that indicated that any particular requirements needed to be satisfied in order to demonstrate that a payrate was paid pursuant to a publicly available pay schedule. In fact, all that was available was the legislative history to SB 53 (Russell) which added the definition of payrate, including that said payrate be paid pursuant to a "publicly available pay schedule," as it applied to a CalPERS member not in a group or class. In the section-by-section analysis of SB 53, provided to the Senate Public Employment & Retirement Committee by CalPERS staff, it was explained that "payrates would have to be publicly noticed by the governing body."<sup>2</sup> No further guidance of what constituted a "publicly available pay schedule" was provided in that analysis.

Thus, it appears that all the guidance that was available to CalPERS employers, including the City, with respect to what it meant to have rate of pay paid pursuant to "publicly available pay schedule," was that such rate of pay was to be publicly noticed by the governing body. In fact, as stated earlier, Section 570.5 did not become operative until August 10, 2011, more than a month after the close of the period subject to the Audit. As such, we respectfully submit that it would be patently unfair to hold the City and/or its City Manager accountable for a requirement that was not defined during the period subject to the Audit.

Based on the preceding, we strongly disagree with the assertion in Finding 1 that the "payrate amount was not publicly disclosed or transparent to the public, nor was it listed on a publicly available pay schedule." First, as indicated above, at most, the pre-570.5 standard for a "publicly available pay schedule" was that it be publicly noticed by the governing body. As noted in Finding 1 of the draft report, the City Manager's pay rate was publicly noticed by the governing body during the City Council's December 4, 2006 meeting when the City Council reported out of closed session that it had "determined to set the City Manager's monthly salary at \$13,900 effective November 1, 2006." A copy of those minutes, which were already provided to the CalPERS field examiners, is enclosed for your reference (Attachment 2). Subsequent increases in the City

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<sup>1</sup> Section 20636(e)(2) is not applicable in this instance as the employee in question is still employed by the City.

<sup>2</sup> Senate Bill 53, 1993-1994 Reg. Sess., Senate Public Employment & Retirement Committee (March 29, 1993), pg. 3 available at [http://www.leginfo.ca.gov/pub/93-94/bill/sen/sb\\_0051-0100/sb\\_53\\_cfa\\_930316\\_155531\\_sen\\_comm](http://www.leginfo.ca.gov/pub/93-94/bill/sen/sb_0051-0100/sb_53_cfa_930316_155531_sen_comm) (last visited June 14, 2012).

Manager's payrate were similarly approved by the City Council and reported out of closed session on December 3, 2007 and November 12, 2008. Copies of those minutes are also enclosed for your reference (Attachments 3 and 4, respectively). While there seems to be an implication in the draft Audit Report that the total payrate and not just the percentage of the increase in the City Manager's payrate needed to be disclosed during the 2007 and 2008 public meetings, there was no such requirement at the time.

Further, all meeting packets and minutes of the City Council have been available on the City's website at <http://www.ci.clayton.ca.us/index.php?section=31> for the current year and the immediately preceding calendar year. Thus, the agenda packet and minutes for the December 4, 2006 meeting would have been available on the City's webpage through at least the end of 2007, and so forth with the applicable public documents of 2007 and 2008. More importantly, the City can demonstrate that all of its payrate data was available to the public upon request. For example, on March 31, 2009, the City responded by e-mail to a public records act request made on behalf of the *Contra Costa Times* for salary paid to all City employees. The disclosed data included the employee name, occupation, department base monthly salary and base annual salary. Thus, the fact that the newspaper's request was granted further supports our position that the City Manager's payrate was a public record, publicly available and available for public scrutiny. A copy of the City's response is enclosed for your reference (Attachment 5).

Further, there appears to be no dispute that the City Manager earned all the payrate component of his reported compensation earnable, and that the City and employee contributions were paid on the full amounts reported. In addition, the City Manager remains an employee of the City and there is no expectation that he will be retiring anytime soon. Thus, consistent with the draft Audit Report's finding that the City began complying with the requirements of Section 570.5 prior to its effective date, done so for the purpose of streamlining the public's access to such information, it is highly probable that the City Manager's retirement benefits will be based on his payrate in effect at some future date. Thus, it would appear that CalPERS would inadvertently harm itself if the City were placed in the position of having to retroactively adjust its pay records triggering an obligation by CalPERS to refund the employer and employee contributions related to those adjustments.

Lastly, we certainly understand and agree with the importance of reviewing the City's records to verify compliance with Section 570.5 as of August 10, 2011. Nonetheless, it would be unfair to impose the requirements of Section 570.5 retroactively when such rules were not delineated at such time particularly when it is clear that the City was not "hiding anything," as so aptly put by Mr. Dutil, and when the City made the City Manager's payrate publicly available at all times during the period subject to the Audit and subsequently.

We look forward to your response on our position on Finding 1 and welcome the opportunity to discuss our position on this subject in person or over the phone.

## **FINDING 2**

*The City included special compensation in the base pay rate and regular earnings.*

A special compensation of \$0.55 per hour for sworn law enforcement personnel for possession of a P.O.S.T. Intermediate Certificate (per local MOU) had previously been reported under regular earnings (pursuant to FLSA). Effective with the City pay period ending 11 December 2011, the City began reporting this incentive compensation as "special compensation" distinct from the base pay rate and regular earnings. Regardless of the CalPERS-required pay category, the sampled employees' compensation does not require augmentation or adjustment.

## **FINDING 3**

*The City reported a retroactive salary adjustment using an incorrect pay rate.*

There was no retroactive salary adjustment in the service period 11/08-3. In service period 11/08-4 there was a retroactive pay increase that involved twenty-four (24) total work hours at a \$1.73 per hour increase which totaled \$41.52. Finance Department personnel (Accounting Technician) did not report this as the pay rate but as a retroactive pay amount under Other Earnings. The sampled employee involved is not due any additional compensation concerning this coding issue, and that same employee agrees no further compensation is due regarding this 2008 pay retroactivity.

## **FINDING 4**

*The City did not enroll temporary/part-time employees into membership when CalPERS eligibility requirements were met.*

The City strives to exercise great care in the administration of its responsibilities when processing public employee payroll and benefits. The City does review and monitor hours worked in a fiscal year by its temporary/part-time employees with clear awareness of the 1,000 hours limit in a fiscal year.

The sudden departure of a full-time permanent employee was temporarily filled by a non-benefited part-time employee in its Police Department, which did cause the overage of hours due to the required recruitment process. Once the permanent position was filled, the part-time employee was placed on unpaid sabbatical and re-commenced work for the City in July 2010. The individual then voluntarily terminated employment with the City in February 2011 when subsequently hired by another CalPERS city starting in March 2011.

A second temporary/part-time employee in the Public Works Department did work one (1) hour beyond the 1,000 hours cap in FY 2010-11.

**FINDING 5**

*The City did not certify the unused sick leave balance for a retired member.*

CalPERS Benefit Services Division provided written notification to the City's Finance Department on 17 December 2008 that an individual was retiring and it stated the applicable end of employment and retirement dates. The CalPERS letter further indicated that ... "if all this information was correct, no further action was needed." City personnel misunderstood this phrase as meaning the City had no further duties to undertake in the CalPERS retirement processing of this individual. City personnel were unaware the City had an affirmative responsibility under CalPERS Regulations to report any unused sick leave balances to CalPERS upon an employee's retirement. City personnel operated under the assumption that CalPERS would initiate a request for such information as unused sick leave balances. It is our understanding the upgraded CalPERS on-line automated system now prompts the Employer to supply such data when entering a retiring employee's information.

- Attachments: 1. Email stream with Mr. Mike Dutil of the CalPERS OAS, dated February 10, 2012 [2 pp.]  
2. Minutes of the December 4, 2006 City Council meeting [1 pg.]  
3. Minutes of the December 3, 2007 City Council meeting [1 pg.]  
4. Minutes of the November 12, 2008 City Council meeting [1 pg.]  
5. City salary data submitted to *Contra Costa Times*, dated March 31, 2009 [2 pp.]

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