California Public Employees' Retirement System
Office of Audit Services
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June 28, 2012

Employer Code: 0979
Job Number: P10-009

City of Garden Grove
John D.R. Clark, Director of Human Resources
P.O. Box 3070
Garden Grove, CA 92842

Dear Mr. Skidmore:

Enclosed is our final report on the results of the public agency review completed for the City of Garden Grove. Your agency's written response, included as an appendix to the report, indicates agreement with the issues noted in the report, except for the section in Finding 4 pertaining to employees employed through temporary employment agencies. However, after review of your agency's response pertaining to temporary employment agencies, our recommendations remain as stated in the report. 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 Garden Grove

Office of Audit Services

Public Agency Review

City of Garden Grove

Employer Code: 0979
Job Number: P10-009

June 2012

CITY OF GARDEN GROVE

TABLE OF CONTENTS

SUBJECT PAGE

Results in Brief 1

City Background 1

Scope 2

Office of Audit Services Review Results 3

- Finding 1: Non-Reportable Compensation 3
- Finding 2: Special Compensation 5
- Finding 3: Publicly Available Pay Schedule 6
- Finding 4: Temporary/Part-Time Employers 7
- Finding 5: Retired Annuitants 8
- Finding 6: Health Benefits Documentation 9

Conclusion 10

CalPERS Background ..... Appendix A

Objectives ..... Appendix B

Criteria ..... Appendix C

Status of Prior Review ..... Appendix D

City's Written Response ..... Appendix E

CITY OF GARDEN GROVE

RESULTS IN BRIEF

The Office of Audit Services (OAS) reviewed the City of Garden Grove's (City) enrolled individuals, member compensation, required health and retirement documentation 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:

- Non-reportable compensation (administrative and holiday pay) was reported to CalPERS.
- The provision for a statutory item of special compensation (uniform allowance) was not contained in a written labor policy or agreement.
- The City Manager's payrate was not in a publicly available pay schedule.
- Eligible temporary/part-time employees were not enrolled in CalPERS membership.
- Retired annuitants were not reinstated.
- Eligibility verification for dependents enrolled in CalPERS Health Benefits Program was not provided and one individual was unlawfully enrolled.

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 Garden Grove was incorporated June 18, 1956 as a general law full service City. The City operates under a council-manager form of government and provides the following services: public safety, highways and streets, social services, culture and recreation, parks, planning, zoning, housing, water, solid waste collection and disposal, sewage services and general administration. 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 January 12, 1974, to provide retirement benefits for local miscellaneous, police and fire employees. The City's current contract amendment identifies the length of the final compensation period as twelve months for all coverage groups. The City contracted with CalPERS effective May 1, 1987, 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.
- 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 documents.

SCOPE

As part of the Board approved plan for fiscal year 2010/2011, 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 September 19, 2011, through September 30, 2011. The review objectives and a summary of the procedures performed, sample sizes, sample periods and findings are listed in Appendix B.

CITY OF GARDEN GROVE

OFFICE OF AUDIT SERVICES REVIEW RESULTS

Finding 1: The City erroneously reported non-reportable compensation.

a) Holiday pay was incorrectly reported for an employee who was not required to work on holidays.
b) Floating holidays were incorrectly reported.
c) Administrative pay was incorrectly reported because it was not contained in a written labor policy or agreement.

Recommendations:

a) The City should immediately stop reporting holiday pay for employees not normally scheduled to work on approved holidays as compensation to CalPERS.
b) The City should immediately stop reporting floating holidays as special compensation to CalPERS.
c) The City should not report administrative pay as special compensation unless it is contained in a written labor policy or agreement.

OAS recommends CASD deny all non-reportable items of compensation. CASD should make the necessary adjustments to the members' accounts, if any, pursuant to Government Code Section 20160.

Conditions:

<u>a) Holiday pay</u>

OAS found that the City correctly reported holiday pay for employees required to work on holidays, except in one instance. Specifically, the City reported holiday pay for an employee who worked in a position not regularly scheduled to work holidays. The City incorrectly reported holiday pay as a cash out for one sampled employee in the 1/11-3 service period.

<u>b) Floating Holidays</u>

OAS found that in the 1/11-3 service period the City incorrectly reported 60 hours of holiday pay on behalf of one sampled employee. The holiday pay consisted of three approved holidays and three floating holidays. Floating holidays are not considered approved holidays for retirement purposes and should not be reported to CalPERS. According to the Police Management MOU, the employee was entitled to holidays that occurred during periods actually worked. The

employee's employment with the City began August 21, 2010; therefore, the employee was entitled to 30 hours of holiday pay, which included, Labor Day, Thanksgiving and Christmas. However, the City incorrectly reported an additional 30 hours of floating holiday pay.

In addition, the MOUs for the police and firefighter associations specify two floating holidays per year. OAS found the City paid and incorrectly reported two floating holidays for one sampled fire safety employee.

c) Administrative Pay

OAS found administrative pay was paid and incorrectly reported on behalf of one sampled managerial employee in the 1/11-3 service period. Administrative pay is considered an item of special compensation; however, it must be contained in a written labor policy or agreement. In this instance, administrative pay was not contained in a written labor policy or agreement; therefore, it did not meet the definition of special compensation.

Criteria:

Government Code § 20049, § 20160, § 20636 (a), § 20636 (c)(1), § 20636 (c)(2), § 20636 (c)(6), § 20636 (d)

California Code of Regulations § 571 (a), § 571 (a)(5), § 571 (b), § 571 (c)

CITY OF GARDEN GROVE

Finding 2: The City did not include uniform allowance, a statutory item of compensation, in a written labor policy or agreement for police employees.

Recommendation:

The City should ensure that uniform allowance, a statutory item of compensation, is contained in a written labor policy or agreement.

OAS recommends CASD ensure the City implements the recommendations noted above and make all compensation adjustments to active and retired members' accounts, if any, pursuant to Government Code Section 20160.

Condition:

The City does not pay a uniform allowance to employees. Instead, the City provides uniforms to its employees and reports the value of uniforms and uniform maintenance for employees who are provided uniforms. The provision for uniforms provided to police employees was not stipulated in a MOU. In additional, the MOU did not specify the bi-weekly amounts paid and reported for the monetary value of uniforms and uniform maintenance for employees required to wear uniforms. Per the California Code of Regulations Section 571(b), the amount being reported for the monetary value of uniforms and uniform maintenance must be contained in a written labor policy or agreement that has been duly approved and adopted by the employer's governing body, and it must indicate the conditions for payment of the item of special compensation, including, but not limited to, eligibility for, and amount of the special compensation.

Criteria:

Government Code § 20049, § 20160, § 20636 (a), § 20636 (c)(1), § 20636 (c)(2), § 20636 (c)(6), § 20636 (d)

California Code of Regulations § 571 (a), § 571 (a)(5), § 571 (b), § 571 (c)

CITY OF GARDEN GROVE

Finding 3: The City did not have a publicly available pay schedules for the City Manager.

Recommendation:

The City should ensure that all positions and payrates are listed on a publicly available pay schedule, and that payrates are paid and reported pursuant to the pay schedule.

OAS recommends CASD ensure the City implements the recommendations noted above and make all necessary adjustments to members' accounts, if any, pursuant to Government Code Section 20160.

Condition:

OAS reviewed the amended employment agreement for the City Manager dated May 13, 2008. The employment agreement was properly authorized and specified the base payrate for each salary increase during the review period.

Although the payrate increases given to the City manager within the review period were in accordance with the City Manager's employment agreement, OAS determined the payrate was not fully transparent to the public. To enhance disclosure and transparency of an employee's payrate, the employee's specific payrate amount should be listed on a pay schedule. OAS recommends that the City clearly state and publish the City Manager's payrate in the City's approved pay schedule in the same manner as for all other City employees, which has been duly approved and adopted by the City's governing body in accordance with requirements of applicable public meeting laws.

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.

Criteria:

Government Code § 20160, § 20636 (b)(1), § 20636 (d)

California Code of Regulations § 570.5

CITY OF GARDEN GROVE

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

Recommendation:

The City should implement procedures to review and monitor the number of hours worked in a fiscal year by all temporary/part-time employees in order to enroll and report eligible employees when membership requirements are met.

OAS recommends CASD assess the impact of these membership eligibility issues and determine what adjustments are needed. CASD should make the necessary adjustments to members' accounts pursuant to Government Code Section 20160.

Condition:

The City did not enroll two sampled part-time employees and one employee hired through a temporary employment agency when membership eligibility requirements were met. Specifically,

- One employee worked a total of 1,048 hours in fiscal year 2009/2010 and should have been enrolled into CalPERS membership once the 1,000-hour eligibility requirement was met in the pay period ending June 11, 2010.
- A second employee worked a total of 1,032.5 hours in fiscal year 2009/2010 and should have been enrolled into CalPERS membership once the 1,000-hour eligibility requirement was met in the pay period ending June 25, 2010.
- A third employee hired through a temporary employment agency worked 1,173 hours in fiscal year 2010/2011; however, was not enrolled into CalPERS membership when the 1,000-hour eligibility requirement was met.

Criteria:

Government Code § 20044, § 20160, § 20305(a)(3)(B)

CITY OF GARDEN GROVE

Finding 5: The City did not reinstate retired annuitants that were unlawfully employed.

Recommendation:

The City should monitor the hours worked by retired annuitants in order to limit the hours worked to 960 hours in a fiscal year, or immediately reinstate a retired annuitant into CalPERS membership if the retired annuitant's employment continues beyond the 960-hour threshold.

OAS recommends BNSD have the City pay CalPERS the employer contributions, which should have been paid during the period the retired annuitant was unlawfully employed, plus interest and administrative expenses.

In addition, OAS recommends BNSD have the retired annuitant reimburse CalPERS for any retirement allowance received during the period of unlawful employment, pay CalPERS the employee contributions that should have been paid during the period of unlawful employment, and reimburse CalPERS for administrative expenses incurred in handling the situation.

Condition:

OAS identified two retired annuitants in fiscal year 2009/2010 that worked more than 960 hours. Specifically,

- One retired annuitant retired December 27, 2008 and worked 970 total hours during fiscal year 2009/2010, but was not reinstated in CalPERS membership.
- A second retired annuitant retired November 21, 2002 and worked 990 total hours during fiscal year 2009/2010, but was not reinstated in CalPERS membership.

Government Code § 21220 provides that a retired member receiving a monthly allowance from CalPERS, shall not, except as otherwise provided, be employed in any capacity thereafter by a CalPERS employer unless the member has first been reinstated from retirement. Any person employed in violation of § 21220 shall be reinstated to CalPERS membership as of the date the unlawful employment began.

Criteria:

Government Code § 20085, § 20160, §21220, § 21224 (a)

CITY OF GARDEN GROVE

Finding 6: The City did not maintain required health forms for the annual recertification of employees with an economically dependent child and continued enrollment of a dependent who did not meet annual recertification requirements.

Recommendation:

The City must ensure that the proper member and dependent enrollment documentation is on file at the City within 60 days from the date of the final OAS report. The CalPERS CASD may be contacted at 1-888-CalPERS (1-888-227-7377) with any questions.

OAS recommends CASD work with the City to obtain any missing documentation and to cancel enrollment of any individual who is found to be ineligible to participate in the CalPERS Health Benefits Program.

Condition:

OAS found the City did not maintain required forms for the enrollment of economically dependent children for two sampled employees. Effective January 1, 2011, the City was required to have members with economically dependent children enrolled as dependents to annually complete an Affidavit of Parent-Child Relationship (HBD-40) form.

Subsequent to the completion of the on-site field work the City completed the required HBD-40 forms for both sampled employees; however, the City determined the economically dependent child for one of the sampled employees did not qualify for recertification of health benefits.

Criteria:

Government Code § 20085, § 22775,

California Code of Regulations § 599.500 (f), § 599.500 (k), § 599.500 (o)

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 30 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
Carol Northrup
Chris Wall

APPENDIX A

BACKGROUND

CITY OF GARDEN GROVE

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

CITY OF GARDEN GROVE

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. OAS completed a prior review covering the period of January 1, 1991, to December 31, 1993.

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

Sample Size and Period: Reviewed 22 employees covering two sampled service periods - the first service period in January 2011 (1/11-3), and the second service period in June 2011 (6/11-4).

See Finding 1: Non-reportable compensation was incorrectly reported.

See Finding 2: Uniform allowance was not contained in a written labor policy or agreement.

✓ 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 22 sampled employees in the second service period in June 2011 (6/11-4).

See Finding 3: Publicly available salary schedules were not available for the City Manager.

✓ 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 22 sampled employees in the second service period in June 2012 (6/11-4).

No Finding

✓ Reviewed the City's enrollment practices for temporary and part-time employees to determine whether individuals where enrolled when CalPERS membership eligibility requirements were met.

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

See Finding 4: The City did not enroll temporary/part-time employees who met eligibility requirements to become CalPERS members.

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

  Sample Size and Period: Ten retired annuitants in fiscal years 2009/2010 and 2010/2011.

  See Finding 5: The City did not reinstate retired annuitants who exceeded the 960-hour threshold in a fiscal year.

- ✓ Reviewed the employment status of independent contractors.

  Sample Size and Period: Thirty-two independent contractors in calendar years 2009 and 2010.

  No Finding

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

  Sample Size and Period: Reviewed five retiring members covering the review period to determine whether unused sick leave balances were correctly certified and reported.

  No Finding

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

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

  See Finding 6: The City did not maintain required health forms for eligibility verification of economically dependent children and continued enrollment of an individual who did not meet annual recertification requirements.

APPENDIX C

CRITERIA

CITY OF GARDEN GROVE

CRITERIA

Government Code § 20044, states:

> "Fiscal year" is any year commencing on July 1st and ending with June 30th next following.

Government Code § 20049, states:

> "Labor policy or agreement" means any written policy, agreement, memorandum of understanding, legislative action of the elected or appointed body governing the employer, or any other document used by the employer to specify the payrate, special compensation, and benefits of represented and unrepresented employees.

Government Code § 20085, states, in part:

> (a) It is unlawful for a person to do any of the following:
> (1) Make, or cause to be made, any knowingly false material statement or material representation, to knowingly fail to disclose a material fact, or to otherwise provide false information with the intent to use it, or allow it to be used, to obtain, receive, continue, increase, deny, or reduce any benefit administered by this system.
> (b) For purposes of this section, 'statement' includes, but is not limited to, any oral or written application for benefits, report of family relationship...or continued eligibility for a benefit or the amount of a benefit administered by this system.
> (c) A person who violates any provision of this section is punishable by imprisonment in a county jail not to exceed one year, or by a fine of not more than five thousand dollars ($5,000), or by both that imprisonment and fine.
> (d) A person violating any provision of this section may be required by the court in a criminal action to make restitution to this system…for the amount of the benefit unlawfully obtained….

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, 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), states, in part:

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: (3)(B) The person…completes 1,000 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…1,000 hours of service were completed.

CITY OF GARDEN GROVE

Government Code § 20636, subdivision (a), defines compensation earnable by a member as, the payrate and special compensation of the member.

Government Code § 20636, subdivision (b)(1), defines payrate, 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 of a member includes a payment received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions.

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

> Special compensation shall be limited to that which is received by a member pursuant to a labor policy or agreement or as otherwise required by state or federal law, to similarly situated members of a group or class of employment that is in addition to payrate. If an individual is not part of a group or class, special compensation shall be limited to that which the board determines is received by similarly situated members in the closest related group or class that is in addition to payrate, subject to the limitations of paragraph (2) of subdivision (e).

Government Code § 20636, subdivision (c)(6), states, in part:

> The board shall promulgate regulations that delineate more specifically and exclusively what constitutes “special compensation” as used in this section. A uniform allowance, the monetary value of employer-provided uniforms… shall be included as special compensation….

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

> Notwithstanding any other provision of law, payrate and special compensation schedules, ordinances, or similar documents shall be public records available for public scrutiny.

Government Code § 21220, states:

> (a) A person who has been retired under this system, for service or for disability, may not be employed in any capacity thereafter by the state, the university, a school employer, or a contracting agency, unless the employment qualifies for service credit in the University of California Retirement Plan or the State Teachers’ Retirement Plan, unless he or she has first been reinstated from retirement pursuant to this chapter, or unless

the employment, without reinstatement, is authorized by this article. A retired person whose employment without reinstatement is authorized by this article shall acquire no service credit or retirement rights under this part with respect to the employment.
(b) Any retired member employed in violation of this article shall:
(1) Reimburse this system for any retirement allowance received during the period or periods of employment that are in violation of law.
(2) Pay to this system an amount of money equal to the employee contributions that would otherwise have been paid during the period or periods of unlawful employment, plus interest thereon.
(3) Contribute toward reimbursement of this system for administrative expenses incurred in responding to this situation, to the extent the member is determined by the executive officer to be at fault.
(c) Any public employer that employs a retired member in violation of this article shall:
(1) Pay to this system an amount of money equal to employer contributions that would otherwise have been paid for the period or periods of time that the member is employed in violation of this article, plus interest thereon.
(2) Contribute toward reimbursement of this system for administrative expenses incurred in responding to this situation, to the extent the employer is determined by the executive officer of this system to be at fault.

Government Code § 21224, subdivision (a), states, in part:

A retired person may serve without reinstatement from retirement or loss or interruption of benefits...during an emergency to prevent stoppage of public business or because the retired employee has specialized skills needed in performing work of limited duration. These appointments shall not exceed a total for all employers of 960 hours in any fiscal year….

Government Code § 22775, states:

"Family member" means an employee's or annuitant's spouse or domestic partner and any child, including an adopted child, a stepchild, or recognized natural child. The board shall, by regulation, prescribe age limits and other conditions and limitations pertaining to children.

California Code of Regulations § 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;
(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.

California Code or Regulation § 571, subdivision (a) provides:

A list that exclusively identifies and defines special compensation items for members employed by contracting agency and school employers that must be reported to CalPERS if they are contained in a labor policy or agreement.

California Code of Regulations § 571, subdivision (a)(5), defines holiday pay as:

Additional compensation for employees who are normally required to work on an approved holiday because they work in positions that require scheduled staffing without regard to holidays. If these employees are paid over and above their normal monthly rate of pay for approved holidays, the additional compensation is holiday pay and reportable to CalPERS.

California Code of Regulations § 571, subdivision (b), states, in part:

The Board has determined that all items of special compensation listed in subsection (a) are:
(1) Contained in a written labor policy or agreement as defined at Government Code section 20049, provided that the document:
(A) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;
(B) Indicates the conditions for payment of the item of special compensation, including, but not limited to, eligibility for, and amount of, the special compensation;
(C) 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;
(D) Indicates an effective date and date of any revisions;
(E) Is retained by the employer and available for public inspection for not less than five years; and
(F) Does not reference another document in lieu of disclosing the item of special compensation;

California Code of Regulations § 571, subdivision (c), states:

> Only items listed in subsection (a) have been affirmatively determined to be special compensation. All items of special compensation reported to PERS will be subject to review for continued conformity with all of the standards listed in subsection (b).

California Code of Regulations § 599.500, contains definitions that apply to the Public Employees' Medical and Hospital Care Act, including the following pertinent provisions:

> (f) "Enroll" means to file with the employing office a properly completed Health Benefits Plan Enrollment Form electing to be enrolled in a health benefits plan.
>
> (k) "Eligible" means eligible under the law and this subchapter to be enrolled.
>
> (o) In addition to a "child" as described in Government Code section 22775, "family member" also includes any child for whom the employee or annuitant has assumed a parent-child relationship, in lieu of a parent-child relationship described in subdivision (n), as indicated by intentional assumption of parental status, or assumption of parental duties by the employee or annuitant, as certified by the employee or annuitant at the time of enrollment of the child, and annually thereafter up to the age of 26 unless the child is disabled as described in section 599.500, subdivision (p). This section should not be construed to include foster children.

APPENDIX D

STATUS OF PRIOR REVIEW

FOLLOW UP ON PRIOR REVIEW FINDINGS
CITY OF GARDEN GROVE
EMPLOYER CODE 0979, PRIOR REVIEW P4-004

Prior Review Finding	Prior Review Recommendation	Status of Recommendation
1. Incorrect conversion of unused sick leave hours to days.	The City should immediately begin converting unused sick leave hours by an 8-hour day. The City should review the conversion of unused sick leave hours for employees who retired during the audit period and subsequently.	Implemented.
2. Eligible employees not reported.	Effective June 1993, the City implemented a new system to monitor the hours worked by temporary and part-time employees to enroll them into CalPERS when they meet membership criteria. They City should ensure that its new system will accurately monitor the hours worked by temporary and part-time employees and enroll them when membership requirements are met. The City should review the payroll records of all persons employed on a temporary or part-time basis during the audit period and subsequently and should ensure that any employees who meet the membership criteria are enrolled.	A similar situation was noted in the current review.
3. Eligible contract employees not reported.	The City should examine all independent contractor agreements it entered into during the audit period and subsequently. When the agreements represent an employee rather than an independent contractor relationship with the City, the City should ensure that the employee is enrolled into CalPERS when enrollment requirements for temporary or part-time employees are met.	Implemented.

Conclusion:

The City had implemented two recommendations of the prior report dated December 1994; however, a similar finding was noted in the current review pertaining to eligible employees not being reported.

APPENDIX E

CITY'S WRITTEN RESPONSE

GARDEN GROVE

CITY OF GARDEN GROVE
HUMAN RESOURCES

Insure equity and fairness in the system
Serve our consumer departments and employees
Assist applicants and candidates in joining the City family

William J. Dalton
Mayor

Dina Nguyen
Mayor Pro Tem

Bruce A. Broadwater
Council Member

Steven R. Jones
Council Member

Kris Beard
Council Member

June 25, 2012

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

Re: Draft Audit of the City of Garden Grove, Dated May 2012

Dear Ms. Junker:

This letter serves as the City's written response to the draft audit as presented in your letter of May 29, 2012.

Finding #1: The City erroneously reported non-reportable compensation.

Recommendations:

a) The City should immediately stop reporting holiday pay for employees not normally scheduled to work on approved holidays as compensation to CalPERS.
b) The should immediately stop reporting floating holidays as special compensation to CalPERS.
c) The City should not report administrative pay as special compensation unless it is contained in a written labor policy or agreement.

City's Response:

The City concurs with PERS Finding #1 and accepts the recommendations as listed. These reporting errors are largely an artifact of our antiquated payroll and accounting mainframe system. We have corrected the errors and are in the process of replacing the current system with a more up-to-date program better able to distinguish between reportable and non-reportable compensation.

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(714) 741-5004 • Fax (714) 741-5030 • www.ci.garden-grove.ca.us

Finding #2: The City should insure that uniform allowance, a statutory item of compensation, is contained in a written labor policy or agreement for police employees.

Recommendation:

The City should insure that uniform allowance, a statutory item of compensation, is contained in a written labor policy or agreement.

City's Response:

The City concurs with PERS Finding #2 and accepts the recommendation as listed.

Finding #3: The City did not have a publicly available pay schedule for the City Manager.

Recommendation:

The City should insure that all positions and payrates are listed on a publicly-available pay schedule, and that payrates are paid and reported pursuant to the pay schedule.

City's Response:

The City concurs with PERS Finding #3. This has been corrected and the City Manager's pay rate is listed on the pay schedule available and easily accessible on the City's public website.

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

Recommendation:

The City should implement procedures to review and monitor the number of hours worked in a fiscal year by all temporary/part-time employees in order to enroll and report eligible employees when membership requirements are met.

City's Response:

The City concurs in part and dissents in part with this finding. Specifically, we concur with the first two cited bullet-point conditions where part-time employees exceeded the 1,000-hour limit but were not enrolled in PERS. These two cases occurred because the employees in question were both close to the 1,000-hour threshold, but had not crossed

it, going into the last pay period of the fiscal year. Their hours during the last pay period then took them over 1,000. We have since modified our monitoring procedures to avoid this occurrence in the future.

We do not agree and do not accept PERS' conclusion with the situation cited in the third bullet point of Conditions: "A third employee hired through a temporary employment agency worked 1,173 hours in fiscal year 2010/2011; however, was not enrolled into CalPERS membership when the 1,000-hour eligibility requirement was met."

The authority you cite is Government Code § 20305(a)(3)(B), which delineates the rule that an employee must be enrolled once the 1,000-hour threshold is met. The key phrase is at the beginning of this section, 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..." *(Emphasis mine). Government Code § 20028 (b) defines* "Employee" as "Any person in the employ of any contracting agency." *The person cited in the third condition was not, and never was, an employee of the City of Garden Grove. Moreover, Government Code § 20300 (b) indicates that the following persons are excluded from membership in this [PERS] system:* "Independent contractors who are not employees."

The City surmises this recommendation is based on the Cargill v. Metropolitan Water District of Southern California decision. *That decision concluded that the temporary employees in question were, in fact, common-law employees of Metropolitan Water District (MWD) and thus entitled to PERS benefits. Once decided, this case was remanded to the trial court to determine exactly how this would be effectuated. This process was in turn superseded by a settlement agreement which provided the plaintiffs with cash payments from MWD and did not result in PERS enrollment. Since the City was never the employer of record (or, we believe, the employer in fact) for the person you cite, we fail to see how the City could have, even if it chose to, enrolled in PERS a person who did not work for the City itself.*

The City does concede and agree that the core holding of the Cargill *decision is that employees hired through "temporary agencies" may indeed at some point acquire a property interest as it concerns PERS membership at some yet-undetermined threshold. Accordingly, the City has modified its procedures such that "agency temps" must be restricted to working less than 1,000 hours in a fiscal year.*

<u>Finding #5: The City did not reinstate retired annuitants that were unlawfully employed.</u>

Recommendation:

The City should monitor the hours worked by retired annuitants in order to limit the hours worked to 960 hours in a fiscal year, or immediately reinstate a retired annuitant into CalPERS membership if the retired annuitant's employment continues beyond the 960-hour threshold.

City's Response:

The City concurs with PERS Finding #5 and accepts the recommendation as listed. These two cases occurred because the employees in question were both close to their 960-hour threshold, but had not crossed it, going into the last pay period of the fiscal year. Their hours during the last pay period then took them over 960. We have since modified our monitoring procedures to avoid this occurrence in the future.

Finding #6: The City did not maintain required health forms for the annual recertification of employees with an economically-dependent child and continued enrollment of a dependent who did not meet annual recertification requirements.

Recommendation:

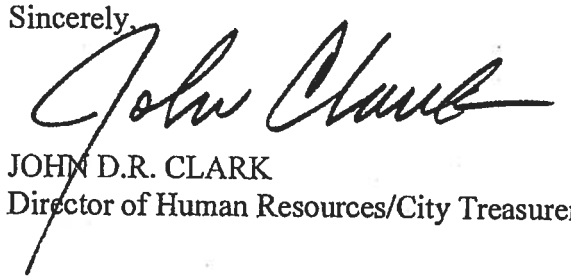
The City must insure that the proper member and dependent enrollment documentation is on file at the City within 60 days of the final OAS report.

City's Response:

The City concurs with PERS Finding #5 and accepts the recommendation as listed.

We too appreciate the assistance and cooperation that PERS staff provided us during the audit. In particular, we applaud the professionalism and courtesy of auditor Chris Wall. Should you have any questions, please contact me directly at (714) 741-5011.

Sincerely,



JOHN D.R. CLARK
Director of Human Resources/City Treasurer

cc: Hershal Skidmore, Finance Manager
Laura J. Stover, Human Resources Manager
Susan Holstein, Benefits Supervisor