Office of Audit Services

Public Agency Review

City of Los Banos

CalPERS ID: 6498305959
Job Number: P14-091

March 2016

California Public Employees' Retirement System
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March 30, 2016

CalPERS ID: 6498305959
Job Number: P14-091

Lucille Mallonee, City Clerk/ HR Manager
City of Los Banos
520 J Street
Los Banos, CA 93635

Dear Ms. Mallonee:

Enclosed is our final report on the results of the public agency review completed for the City of Los Banos (Agency). Your written response, included as an appendix to the report, indicates agreement with the issues noted in the report except for a portion of Finding 3A. We appreciate the additional information you provided regarding Finding 3A. As a result, we revised Finding 3A.

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. We appreciate the time and assistance of you and your staff during this review.

Sincerely,

Original signed by Beliz Chappuie

BELIZ CHAPPUIE, Chief
Office of Audit Services

Enclosure

cc: Council Members, the City of Los Banos
Risk and Audit Committee Members, CalPERS
Matthew G. Jacobs, General Counsel, CalPERS
Anthony Suine, Chief, BNSD, CalPERS
Renee Ostrander, Chief, EAMD, CalPERS
Carene Carolan, Chief, MAMD, CalPERS

CITY OF LOS BANOS

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CITY OF LOS BANOS

RESULTS IN BRIEF

The objective of our review was to determine whether the City of Los Banos (Agency) complied with applicable sections of the Government Code (Government Code), California Public Employees' Pension Reform Act of 2013 (PEPRA), California Code of Regulations (CCR), and its contract with the California Public Employees' Retirement System (CalPERS).

The Office of Audit Services (OAS) noted the following findings during the review. Details are noted in the Results section beginning on page two of this report.

- Pay schedule did not meet all of the requirements of the Government Code and CCR.
- Special compensation was not reported as required by CCR Section 571.
- Retroactive salary adjustments were incorrectly reported.
- Earnings were incorrectly reported.
- Contributions were incorrectly reported.
- Council Member was not enrolled in accordance with the Government Code.
- Member reciprocal self-certification was not maintained.

OAS recommends the Agency comply with applicable sections of the Government Code, PEPRA, CCR and its contract with CalPERS. We also recommend the Agency work with the appropriate CalPERS divisions to resolve issues identified in this report.

SCOPE

The Agency contracted with CalPERS effective November 1, 1957 to provide retirement benefits for local miscellaneous, safety-police, and safety-fire employees. By way of the Agency's contract with CalPERS, the Agency agreed to be bound by the terms of the contract and the Public Employees' Retirement Law (PERL). The Agency also agreed to make its employees members of CalPERS subject to all provisions of the PERL.

As part of the CalPERS Board of Administration (Board) approved plan, OAS reviewed the Agency's payroll reporting and member enrollment processes related to the Agency's retirement contract with CalPERS. The review was limited to the examination of sampled employees, records, and pay periods from July 1, 2011 through June 30, 2014. The review objectives and methodology are listed in Appendix A.

CITY OF LOS BANOS

OFFICE OF AUDIT SERVICES REVIEW RESULTS

1: The Agency's pay schedule did not meet all of the Government Code and CCR requirements.

Condition:

The Agency's pay schedule, approved on April 2, 2014, did not meet all the requirements of the Government Code and CCR. Specifically, the Agency's pay schedule did not indicate the time-base for full time employee payrates. Additionally, the pay schedule did not indicate an effective date. The Agency should state the time-base for all employees listed on the pay schedule and the effective date for all salary ranges.

Only compensation earnable as defined under Government Code Section 20636 and corresponding regulations can be reported to CalPERS and considered in calculating retirement benefits. For purposes of determining the amount of compensation earnable, a member's payrate is limited to the amount identified on a publicly available pay schedule. Per CCR Section 570.5, a pay schedule, among other things, must:

- Be duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;
- Identify the position title for every employee position;
- Show the payrate as a single amount or multiple amounts within a range for each identified position;
- Indicate the time base such as hourly, daily, bi-weekly, monthly, bi-monthly, or annually;
- Be 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;
- Indicate an effective date and date of any revisions;
- Be retained by the employer and available for public inspection for not less than five years; and
- Not reference another document in lieu of disclosing the payrate.

Pay amounts reported for positions that do not comply with the payrate definition and pay schedule requirements cannot be used to calculate retirement benefits because the amounts do not meet the definition of payrate under Government Code Section 20636(b)(1). When an employer does not meet the requirements for a

publicly available pay schedule, CalPERS, in its sole discretion, may determine an amount that will be considered to be payrate as detailed in CCR Section 570.5.

Recommendation:

The Agency should ensure its pay schedule meets all of the Government Code and CCR requirements.

The Agency should work with CalPERS Employer Account Management Division (EAMD) to identify and make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 20636
CCR: § 570.5

2: The Agency did not report special compensation as required by the CCR.

Condition:

A. The Agency over reported Temporary Upgrade Pay for a Firefighter. Specifically, the Agency reported Temporary Upgrade Pay of $132.51 as special compensation during pay period ended October 31, 2013. However, the Agency should have reported $32.49 as special compensation. As a result, the Agency over reported Temporary Upgrade Pay by $100.02.

B. The Agency incorrectly reported special compensation for the Human Resources Director in the pay period ended May 31, 2014. The Agency's Human Resources Director works full-time and also serves as the City Clerk. In addition to the earnings reported for rendering services as the Human Resources Director, the Agency reported $100.00 as special compensation for serving as the City Clerk. Government Code Section 20635 states that when an employee renders service in two or more positions, one of which is full-time, service in the part-time position will constitute overtime. Additionally, if the second position is also a full-time position, the position with the highest payrate shall be reported.

C. The Agency incorrectly reported Canine Pay of $100.00 as special compensation for a Police Officer in the pay period ended May 31, 2014. Specifically, the Los Banos Police Officers Association (LBPOA) written labor agreement identified the Canine Pay as compensation for time worked during non-regularly scheduled work hours to perform duties such as feeding, caring for, and training. CCR Section 571(b) states that all items of special compensation listed in subsection (a) must be part of normally required duties and performed during normal hours of employment. Although Canine Pay is listed and defined in CCR Section 571(a), the pay was not reportable as special compensation because it was payment for time worked outside of the normal hours of employment.

D. The Agency incorrectly reported $60.72 as special compensation for a Police Officer assigned to motorcycle duty in the pay period ended May 31, 2014. The Police Officer received two pay incentives for the motorcycle duty assignment. The first incentive was for the actual assignment and the pay was correctly reported as special compensation. However, the second incentive was for time spent during the Police Officer's off-duty hours for the cleaning and maintaining the motorcycle. CCR Section 571(b) states that all items of special compensation listed in subsection (a) must be part of normally required duties and performed during normal hours of employment. The pay was not reportable

as special compensation because it was not part of normally required duties and was payment for time worked outside of the normal hours of employment.

E. The Agency incorrectly reported monetary value for the purchase and maintenance of uniforms as special compensation for Community Services Officers, Police Officers, and Firefighters during the pay period ended July 31, 2013. Specifically, the Agency reported the value of uniforms as a lump sum amount instead of when earned. Government Code Section 20636(c)(3) requires the Agency to identify the pay period(s) in which the special compensation was earned.

F. The Agency's written labor agreement for the LBPOA, Los Banos Fire Fighters Association (LBFFA), and Los Banos Police Dispatchers/ Community Services Officers Association (LBPDCSOA) did not list the monetary value of the uniforms and uniform maintenance provided for its employees. CCR Section 571(b) requires the written labor policy or agreement contain the conditions for payment of, including, but not limited to, eligibility for, and amount of, the special compensation.

Reportable special compensation is defined in CCR Section 571(a) and must be reported if it conforms with all of the requirements listed in CCR Section 571(b). Specifically, special compensation is required to be contained in a written labor policy or agreement indicating the eligibility and amount of special compensation. Also, special compensation must be available to all members in the group or class, part of normally required duties, performed during normal hours of employment, paid periodically as earned, and historically consistent with prior payments for the job classification.

Recommendation:

The Agency should ensure that special compensation is correctly calculated and reported to CalPERS.

The Agency should not report special compensation that constitutes overtime pay, or is not earned during normal hours of employment.

The Agency should ensure special compensation is reported as earned.

The Agency should ensure that the monetary value for uniforms is defined in the written labor policy or agreement as special compensation and reportable to CalPERS.

The Agency should work with EAMD to identify and make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 20630, § 20635, § 20636
CCR: § 571

3: Retroactive salary adjustments were incorrectly reported.

Condition:

A. The Agency incorrectly reported retroactive salary adjustments as prior period adjustments for four police employees in the pay period ended March 31, 2014. The Agency also reported the retroactive salary adjustments as lump sum amounts rather than for the pay periods in which the compensation was earned. Each payroll record reported to CalPERS must include a transaction type to describe the type of contribution, deduction or adjustment being reported. A Prior Period Adjustment transaction type is used to identify an adjustment to a prior period record. A Retroactive Salary Adjustment transaction type is used to capture a salary increase covering multiple periods.

B. The Agency also incorrectly reported retroactive salary adjustments for the Police Chief and an Accounting Technician during pay period ended June 15, 2014. Specifically, the Agency did not report the retroactive salary adjustments for the period earned. For instance, the Agency paid and reported a retroactive salary adjustment of $253.98 in the semi-monthly pay period ended June 15, 2014. However, the adjustment was for the period of May 15 through May 31, 2014. In addition, the Agency reported the $253.98 as part of the employee's regular earnings in pay period ended June 15, 2014. The earnings should have been reported separately as a retroactive salary adjustment.

When reporting retroactive salary increases the Agency should properly identify the adjustments as retroactive salaries and provide the inclusive dates of the increase as well as the new payrate, total earnings, and contributions for the period.

Recommendation:

The Agency should ensure that retroactive salary adjustments are reported correctly.

The Agency should work with EAMD to identify and make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20120, § 20121, § 20160, § 20630, § 20636

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4: The Agency incorrectly reported compensation for a Council Member.

Condition:

The Agency incorrectly reported compensation for a Council Member. Specifically, the Council Member was paid $300.00 for the period May 1-31, 2014. However, the Agency incorrectly reported the compensation during a semi-monthly period, May 16-31, 2014.

Payroll information must be accurately reported in order to correctly calculate employees' service credit and final compensation for retirement benefits.

Recommendation:

The Agency should ensure that compensation is correctly reported.

The Agency should work with EAMD to assess the impact of this incorrect reporting and make any adjustments, if necessary, to any impacted retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20120, § 20121, § 20160, § 20221, § 20636

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5: The Agency incorrectly reported contributions.

Condition:

The Agency incorrectly reported contributions for a Council Member. Specifically, the Agency incorrectly calculated a social security modification that resulted in over reporting of contributions in the pay period ended May 31, 2014. The Agency paid $18.67 in contributions on modified earnings of $233.33 and should have paid $16.00 on modified earnings of $200.00.

Recommendation:

The Agency should ensure that contributions are correctly reported to CalPERS.

The Agency should work with EAMD to assess the impact of this incorrect reporting and make any adjustments, if necessary, to any impacted retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20120, § 20121, § 20160

6: The Agency did not enroll a Council Member into membership in accordance with the Government Code.

Condition:

The Agency incorrectly enrolled an elected official into membership. Specifically, the Agency enrolled a Council Member into membership without the Council Member filing an election in writing to become a member. In addition, the Council Member was enrolled as a regular member. The Council Member should have been enrolled as an optional member.

Government Code 20322 states that eligible elected officials are excluded from membership unless and until a written election for membership is filed with CalPERS. Once the written election is completed, the elected officials should be enrolled as an optional member to ensure they receive full-time service credit pursuant to Government Code Section 20899.

Recommendation:

The Agency should work with EAMD to ensure elected officials are advised of their CalPERS optional membership rights when first elected and file the appropriate election in writing with CalPERS for those who elect to be members.

The Agency should ensure that elected officials are enrolled as optional with CalPERS.

The Agency should work with EAMD to assess the impact of this incorrect reporting and make any adjustments, if necessary, to any impacted retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 20322, § 20899

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7: The Agency did not maintain member reciprocal self-certification forms.

Condition:

The Agency did not obtain the required member reciprocal self-certification for employees hired after January 1, 2013. CCR Section 579.3 requires individuals to self-certify in writing as to whether he or she is also a member of another public retirement system and is eligible for reciprocity. Agencies are required to retain the retirement and benefit-related information provided by the newly-hired individuals.

Recommendation:

The Agency should ensure employees hired on or after January 1, 2013 self-certify in writing whether they are members of another public retirement system and provide the additional required information if reciprocity exists. Further, the Agency should ensure it retains the information provided.

The Agency should work with EAMD to assess the impact of this incorrect reporting and make any adjustments, if necessary, to any impacted retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 7522.02, § 7522.04
CCR: § 579.3

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CONCLUSION

OAS limited this review to the areas specified in the scope section of this report and in the objectives outlined in Appendix A. The procedures performed provide reasonable, but not absolute, assurance that the Agency complied with the specific provisions of the PERL and CalPERS contract 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, of California Code of Regulations.

Respectfully submitted,

Original signed by Beliz Chappuie

BELIZ CHAPPUIE, CPA, MBA
Chief, Office of Audit Services

Staff: Cheryl Dietz, CPA, Assistant Division Chief
Alan Feblowitz, CFE, Senior Manager
Dennis Szeto, Lead Auditor
Vincent Antolini, Auditor

APPENDIX A

OBJECTIVES

CITY OF LOS BANOS

OBJECTIVES

The objectives of this review were limited to determine whether the Agency complied with:

- Applicable sections of the Government Code (Sections 20000 et seq.), PEPRA, and Title 2 of the CCR.
- Reporting and enrollment procedures prescribed in the Agency's retirement contract with CalPERS.

Effective January 1, 2013, new enrollments are checked against the PEPRA definition of "new member," regardless of whether the enrollment is for a first time CalPERS member or an existing member. All members that do not fit within the definition of a new member are referred to as "classic members."

METHODOLOGY

To accomplish the review objectives, OAS interviewed key staff members to obtain an understanding of the Agency's personnel and payroll procedures, reviewed documents, and performed the following procedures.

✓ Reviewed:
- o Provisions of the contract and contract amendments between the Agency and CalPERS
- o Correspondence files maintained at CalPERS
- o Agency Board minutes and Agency Board resolutions
- o Agency written labor policies and agreements
- o Agency salary, wage, and benefit agreements including applicable resolutions
- o Agency personnel records and employee time records
- o Agency payroll information including Contribution Detail Transaction History reports
- o Documents related to employee payrate, special compensation, and benefits
- o Various other relevant documents

✓ Reviewed Agency payroll records and compared the records to data reported to CalPERS to determine whether the Agency correctly reported compensation.

✓ Reviewed payrates reported to CalPERS and reconciled the payrates to Agency 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

Agency's governing body in accordance with requirements of applicable public meetings laws.

- ✓ Reviewed CalPERS reports to determine whether the payroll reporting elements were reported correctly.
- ✓ Reviewed the Agency's enrollment practices for temporary and part-time employees to determine whether individuals met CalPERS membership requirements.
- ✓ Reviewed the Agency's employment practices for retired annuitants to determine if retirees were lawfully employed and reinstated when unlawful employment occurs.
- ✓ Reviewed the Agency's independent contractors to determine whether the individuals were either eligible or correctly excluded from CalPERS membership.
- ✓ Reviewed the Agency's affiliated entity organizational structure to determine whether employees of the affiliated entity qualified for CalPERS membership and were enrolled as required.
- ✓ Reviewed the Agency's calculation and reporting of unused sick leave balances, if contracted to provide additional service credits for unused sick leave.
- ✓ Reviewed the Agency's records to determine whether member census data agreed with my|CalPERS information.

CITY OF LOS BANOS

APPENDIX B

AGENCY'S WRITTEN RESPONSE

City of Los Banos
At the Crossroads of California

City Hall
520 J Street
Los Banos, CA 93635

Phone: (209) 827-7000
Fax: (209) 827-7010
www.losbanos.org

March 14, 2016

CalPERS
Office of Audit Services
P.O. Box 942701
Sacramento CA 94229-2701

SUBJECT: Public Agency Review, CalPERS ID 6498305959, Job Number P14-01

Dear Ms. Chappuie,

Enclosed please find the City's written response to the draft report of the compliance review conducted on the City of Los Banos.

If you have any questions or need more information, please contact me at (209) 827-7000 ext 112.

Sincerely,

[redacted] Original signed by Lucy Mallonee

Lucy Mallonee, MMC
City Clerk/Human Resources Director

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Enclosures

1. The Agency has already corrected this error. The current pay schedule indicates a monthly salary and states the effective date of the schedule.
2.
    a. This was a one-time calculation error. The Agency is calculating temporary upgrade pay for firefighters correctly.
    b. The Agency is no longer reporting the City Clerk pay as special compensation pay to CalPERS.
    c. The Agency is no longer reporting canine pay as special compensation to CalPERS.
    d. The Agency is no longer reporting the motorcycle pay for the care & upkeep of the cycle as special compensation to CalPERS.
    e. The Agency calculates the amount spent on uniforms for the entire fiscal year and reports it accordingly at year end. In the future, the Agency will show the reporting period as the entire fiscal year and not the pay period in which it was calculated and paid.
    f. The current Memorandum of Understandings (MOU's) for Los Banos Firefighters Association (LBFFA) and Los Banos Dispatcher & Community Services Officers Association (LBDCSOA) have the correct language as to uniform allowance per the CalPERS requirement.
3.
    a. The Agency will now report retroactive pay increases as such using the retroactive salary adjustment transaction type. The Agency will also make sure the period in which the retroactive pay applies is also used. However, the Agency disagrees with auditor's retro calculation for the employee tested.
    b. The Agency will use the retroactive salary adjustment transaction type to report all retro pays. It will also make sure to use the pay period in which the retro pay was earned for reporting purposes.
4. This was a one-time error. The Agency will report monthly payroll for council members as monthly and indicate the correct dates as per the CalPERS requirement.
5. The Agency has repeatedly tried to correct this error when reporting current payrolls to CalPERS as recommended but the CalPERS reporting system does not allow us to do so.
6. The Agency has corrected this one-time error and now enrolls council members as optional members as recommended.
7. The Agency has corrected this error and now maintains reciprocal self-certification forms for employees hired after 1-1-13.