

Office of Audit Services



Public Agency Review

City of Long Beach

**Employer Code: 0295
CalPERS ID: 5919361285
Job Number: P11-012**

July 2013



California Public Employees' Retirement System
Office of Audit Services
P.O. Box 942715
Sacramento, CA 94229-2715
TTY: (877) 249-7442
(916) 795-0802 phone, (916) 795-7836 fax
www.calpers.ca.gov

July 10, 2013

Employer Code: 0295
CalPERS ID: 5919361285
Job Number: P11-012

City of Long Beach
John Gross, Director of Financial Management
333 West Ocean Blvd, 6th Floor
Long Beach, CA 90802

Dear Mr. Gross:

Enclosed is our final report on the results of the public agency review completed for the City of Long Beach. Your written response, included as an appendix to the report, indicates disagreement with Findings 2, 3, 4, 5, 6, 10 and 11. We reviewed the information included in your agency's response pertaining to these findings, and our recommendations remain as stated in the report with the exception of Finding 2. Three wheeled motor sweeper pay and non-platoon schedule pay were removed from the exceptions noted in Finding 2 based on information you provided with your response.

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 City 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
Anthony Suine, Chief, BNSD, CalPERS
Deborah R. Mills, Director of Human Resources, City of Long Beach
Kenneth A. Walker, Manager-Personnel Operations, City of Long Beach
Christina Checél, Senior Deputy City Attorney, City of Long Beach
Francine Wiegelman, Accounting Operations Officer, City of Long Beach

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RESULTS IN BRIEF

The California Public Employees' Retirement Systems' (CalPERS) Office of Audit Services (OAS) reviewed the City of Long Beach's (City) enrolled individuals, member compensation, 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:

- Value of employer paid member contributions (EPMC) and the value of the uniforms provided were not reported.
- Non-reportable compensation was erroneously reported.
- Items of compensation were incorrectly included in base payrate and regular earnings.
- Pay schedule did not comply with regulations.
- Payrates were incorrectly reported.
- Work schedule codes were incorrectly reported.
- Retired annuitant was not reinstated.
- Employee was misclassified as an independent contractor.
- Temporary/part-time employees were not enrolled timely.
- Unused sick leave was erroneously reported.
- Written labor policy or agreement was not in compliance with California Code of Regulations Section 571.

CITY BACKGROUND

The City of Long Beach (City) operated under a City Charter originally adopted in 1921. The City Charter established the current Mayor-Council-City Manager form of government, set forth the powers and duties of the Mayor and City Council, and defined the roles, duties and form of organization of the City's various boards, commissions, and other offices. The City Council appoints a City Manager who serves at the discretion of the Council.

Memoranda of Understanding (MOU), salary resolutions, and employment agreements outline 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, 1950 to provide retirement benefits for local miscellaneous employees.

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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.

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 contract with CalPERS. The review period was limited to the examination of sampled records and processes from September 1, 2008 through August 31, 2011. The on-site fieldwork for this review was conducted on October 17 through October 28, 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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OFFICE OF AUDIT SERVICES REVIEW RESULTS

Finding 1: The City did not report items of special compensation.

- a) Value of uniforms and uniform maintenance were not reported and were not contained in a written labor policy or agreement.
- b) The value of Employer Paid Member Contributions (EPMC) was not reported to CalPERS.

Recommendation:

- a) The City should ensure that the value of uniforms and uniform maintenance are reported for all employees required to wear a uniform and are contained in a written labor policy or agreement.
- b) The City should ensure the value of EPMC is reported on all items of compensation.

The City should work with Customer Account Services Division (CASD) to implement the recommendations noted above and to make the necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

Condition:

- a) The City did not report the value of uniforms to CalPERS for one sampled employee in the harbor division. Specifically, OAS determined the City did not report the bi-weekly uniform amount of \$5.88 on behalf of a Senior Surveyor. In addition, this statutory item of special compensation was not contained in a written labor policy or agreement.
- b) The City did not report the value of EPMC for both regular earnings and special compensation for the sampled Senior Surveyor.

Criteria:

Government Code: § 20049, § 20160, § 20636(c)(4), § 20636(c)(6)

California Code of Regulations: § 571(a)(1), § 571(a)(5), § 571(b)

CITY OF LONG BEACH

Finding 2: The City erroneously reported non-reportable compensation to CalPERS.

Recommendations:

The City should discontinue reporting non-reportable items of compensation to CalPERS and work with CalPERS CASD to ensure that only reportable items of compensation are reported to CalPERS.

The City should work with CASD to determine the impact of this erroneous reporting and determine what adjustments are needed to active and retired member accounts pursuant to Government Code Section 20160.

Conditions:

The City erroneously reported non-reportable items of compensation such as dispatch/closed circuit television (CCTV), overtime pay, and helicopter observer pay. Dispatch/CCTV, overtime, and helicopter observer pay do not meet the definition of special compensation and should not be reported to CalPERS as compensation.

Criteria:

Government Code: § 20636(a), § 20636(b)(1), § 20636(c)(3),

California Code of Regulations: § 571(a), § 571(b)

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Finding 3: The City incorrectly combined and reported special compensation with base payrate and regular earnings.

Recommendations:

The City should immediately discontinue reporting items of special compensation with base payrate and regular earnings.

The City should work with CASD to determine the impact of this erroneous reporting and determine what adjustments are needed to active and retired member accounts pursuant to Government Code Section 20160.

Conditions:

The City incorrectly included items of special compensation, such as skill pay, in the employees' reported base payrate and regular earnings. Skill pay is compensation paid on a per diem basis, as an hourly rate or as a one-time payment.

OAS reviewed the City's list of items identified as skill pay and determined it included both reportable and non-reportable items of compensation. A sample of items identified as non-reportable compensation was detailed in finding 2. Only reportable items of special compensation exclusively and specifically listed in the California Code of Regulations Section 571(b) can be reported to CalPERS. In addition, special compensation must be reported separately from base payrate and regular earnings.

Criteria:

Government Code: § 20160, § 20636(a), § 20636(c)(1), § 20636(c)(6)

California Code of Regulations: § 571(b)

Public Agency & Schools Reference Guide page 66

CITY OF LONG BEACH

Finding 4: The City reported payrates that did not qualify as compensation earnable.

Recommendations:

The City must ensure that reported payrates are set forth in a publicly available pay schedule and meet the definition of payrate. Only compensation earnable as defined under Government Code Section 20636 and corresponding regulations can be reported to CalPERS and considered in calculating retirement benefits. Additionally, the City must ensure that all employees' salaries are properly reviewed, authorized and approved by the City's governing body in accordance with public meeting laws.

The City should work with CASD to determine the impact of this erroneous reporting and determine what adjustments are needed to active and retired member accounts pursuant to Government Code Section 20160.

Conditions:

The City charter specified that elected officials, including the City Attorney, receive annual salary increases every July in accordance with the local consumer price index. OAS determined the payrates reported to CalPERS for elected officials were not duly approved and adopted by the City's governing body in accordance with requirements of applicable public meetings laws pursuant to Government Code Section 20636.

Specifically, the City Attorney received a salary increase every July which was not approved by the Board until the annual budget was adopted several months later. The Board's lack of timely formal approval, of the annual salary increases, resulted in several months where the payrates did not qualify as compensation earnable.

Criteria:

Government Code: § 20049, § 20160, § 20636(b)(1)

California Code of Regulations: § 570.5

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Finding 5: The City reported incorrect payrate increases to CalPERS.

Recommendations:

The City should report an increase in payrate as separate line entries with the corresponding payrate and earnings for each position.

The City should work with CASD to ensure payrates and earnings are properly reported to CalPERS. OAS recommends CASD make any necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

Conditions:

The City incorrectly reported payrate and earnings for three sampled elected officials in the 07/09-3, 07/10-3 and 7/11-3 service periods. Specifically, we noted the elected officials received a salary increase every July and the payrates were incorrectly reported to CalPERS. The elected officials received the payrate increase in the middle of the pay period and the City incorrectly reported the average of the two payrates as well as the total earnings received during the pay period as a single payroll entry. The City should have reported each payrate and the corresponding earnings as a separate line entry to CalPERS.

CalPERS Procedures Manual, Payroll Reporting Procedures, page 97, states, "If a member works in more than one position or received a raise in the middle of a pay period, report amounts earned under each payrate separately."

Criteria:

Government Code: § 20160, § 20630(b), § 20636(a), § 20636(b)(1)

Public Agency & Schools Reference Guide, Payroll Reporting Procedures, page 97

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Finding 6: The City reported incorrect work schedule codes to CalPERS.

Recommendation:

The City should ensure that the correct work schedule code is reported for employees who work an average of 173 hours per month.

The City should work with CASD to assess the impact of these incorrect payroll reporting elements and make any necessary payroll adjustments to active and retired member accounts pursuant to Government Code Section 20160.

Condition:

OAS found that the City reported incorrect work schedule codes for the Deputy Fire Chief, Fire Chief, and Assistant Fire Chief who normally work 40 hours per week and average 173 hours per month. When the City reports monthly payrates, the work schedule code should identify what the City determines to be full-time employment for the positions. The City incorrectly reported a work schedule code of 242, which indicated a 56-hour work week. The correct work schedule code for employees who work a 40-hour work week should be 173.

As of September 2011, the my|CalPERS system requires the City to accurately report the actual number of hours worked per week.

Criteria:

Government Code: § 20160

Public Agency & Schools Reference Guide, Payroll Reporting, page 89

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Finding 7: The City did not reinstate retired annuitants that exceeded the 960-hour limit in a fiscal year.

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 to work beyond the 960-hour threshold.

The City should work with Benefit Services Division (BNSD) to pay CalPERS the employer contributions that should have been paid during the period the retired annuitant was unlawfully employed, plus interest and administrative expenses.

In addition, BNSD should have the retired annuitant reimburse CalPERS for any retirement allowance received during the period of unlawful employment, pay CalPERS 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 the following three retired annuitants in fiscal year 2009/2010 who exceeded the 960-hour threshold.

- One retired annuitant retired on July 20, 2004 and worked a total of 1,331.5 hours but was not reinstated from retirement.
- A second retired annuitant retired on June 30, 2004 and worked a total of 962 hours but was not reinstated from retirement.
- A third retired annuitant retired on December 29, 2007 and worked a total of 961 hours but was not reinstated from retirement.

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 Section 21220 shall be reinstated to CalPERS membership as of the date the unlawful employment began.

Criteria:

Government Code: § 20160, § 21202, § 21220, § 21224(a)

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Finding 8: The City incorrectly classified an employee as an independent contractor.

Recommendation:

The City should ensure employees are properly classified and enrolled into CalPERS membership when eligible.

The City should work with CASD to determine the impact of this erroneous reporting and determine what adjustments are needed to active and retired member accounts pursuant to Government Code Section 20160.

Condition:

OAS determined an individual was working in an employer/employee relationship dating back to the initial contract date of December 12, 1994 and was incorrectly classified as an independent contractor. The employee continued to work for the City in the capacity of an independent contractor until the City enrolled her into CalPERS membership on December 15, 2012. OAS was unable to determine when the employee would have met CalPERS eligibility requirements pursuant to Government Code Section 20305.

For the purposes of the Public Employees' Retirement Law and for programs administered by the Board of Administration of CalPERS (Board), the standard used for determining whether an individual is the employee of another person is the California common law as set forth in the California Supreme Court case titled *Tieberg v. Unemployment Ins. App. Bd.*, (1970) 2 Cal. 3d 943, which was cited with approval in *Metropolitan Water Dist. v. Superior Court*, (2004) 32 Cal. 4th 491, and which was adopted by the Board in a precedential decision, *In the Matter of Lee Neidengard*, precedential Decision No. 05-01, effective April 22, 2005.

Applying the California common law, the most important factor in determining whether an individual performs services for another as an employee is the right of the principal to control the manner and means of job performance and the desired result, whether or not this right is exercised. Where there is independent evidence that the principal has the right to control the manner and means of performing the service in question, CalPERS will determine that an employer-employee relationship exists between the employee and the principal.

Where there is no clear independent evidence that the principal has the right to control the manner and means of an individual's performance of the services in

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question, CalPERS, applying the California common law, will consider the following additional factors in determining whether an individual is an employee:

- (a) whether or not the one performing services is engaged in a distinct occupation or business;
- (b) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of a principal or by a specialist without supervision;
- (c) the skill required in the particular occupation;
- (d) whether the principal or the individual performing the services supplies the instrumentalities, tools, and the place of work for the person doing the work;
- (e) the length of time for which the services are to be performed;
- (f) the method of payment, whether by the time or by the job;
- (g) whether or not the work is a part of the regular business of the principal; and
- (h) whether or not the parties believe they are creating the relationship of employer-employee.

Criteria:

Government Code: § 20160, § 21202, § 21220, § 21224(a)

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Finding 9: The City did not enroll part-time employees that worked more than 1,000 hours in a fiscal year promptly.

Recommendation:

The City should enroll all eligible employees into CalPERS membership when membership eligibility requirements are met pursuant to Government Code Section 20305.

The City should work with CASD to identify the impact of this enrollment issue and make the necessary adjustments to the members' accounts pursuant to Government Code Section 20160.

Condition:

OAS reviewed the hours and compensated service by part-time employees to determine if they met CalPERS membership eligibility requirements and, if so, were timely enrolled into CalPERS membership. The hours worked in fiscal years 2009/2010 and 2010/2011 were reviewed for 10 sampled employees. OAS determined the following:

- One part-time employee was compensated for 1,326 hours in fiscal year 2009/2010 and met the CalPERS 1,000-hour membership eligibility requirement in the pay period ending May 7, 2010. However, the member was not enrolled until June 19, 2010.
- A second part-time employee was compensated for 1,079.1 hours in fiscal year 2010/2011 and met the CalPERS 1,000-hour membership eligibility requirement in the pay period ending June 17, 2011. However, the member was not enrolled until October 31, 2011.

Criteria:

Government Code: § 20160, § 20305

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Finding 10: The City incorrectly reported the balance of unused sick leave.

Recommendation:

The City should ensure the correct amount of unused sick leave is certified so employees receive the appropriate amount of service credit upon retirement.

The City should maintain separate sick leave balances to accurately identify the sick leave balances at the rates accrued based on an employee's work schedule.

The City should work with BNSD to assess the impact of this incorrect reporting and determine what adjustments are needed pursuant to Government Code Section 20160.

Condition:

OAS found that the City incorrectly converted unused sick leave for two fire fighters who were assigned to a 56-hour workweek. Due to the following conversion, OAS was unable to determine the correct amount of unused sick leave to report for both sampled employees.

The City used a conversion method that resulted in unused sick leave being either over-stated or under-stated when employees changed from one work schedule to another. The City provided employees with sick leave accrual rates of 8, 10 and 12 hours per month based on employee work schedules. When employees changed work schedules, the City converted the balance of all sick leave earned under the prior work schedule to the accrual rate for the new work schedule. City staff stated the balance of past unused sick leave was converted to the new accrual rate rather than establishing a separate sick leave bank.

To ensure unused sick leave is properly reported to CalPERS, each sick leave bank should be maintained separately to identify the accrual rate that it was earned according to employee work schedules. Prior to retirement, the aggregate balance of hours from each sick leave bank should be reported in days to CalPERS using a divisor of eight when converting to hours, regardless of work schedule.

Criteria:

Government Code: § 20965

Public Agency & Schools Reference Guide, Payroll Reporting, page 109 and 122

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Finding 11: Certain skill pay reported by the City as special compensation did not comply with California Code of Regulations Section 571.

Recommendation:

The City should work with CASD to ensure all items of special compensation are properly included in a written policy or labor agreement pursuant to California Code of Regulations (CCR) Section 571.

The City should work with CASD to assess the impact of this erroneous reporting and determine what adjustments are needed to active and retired member accounts pursuant to Government Code Section 20160.

Condition:

California Code of Regulations Section 571 exclusively defines special compensation items that must be reported to CalPERS if they are contained in a written labor policy or agreement. OAS noted certain skill pay items reported to CalPERS did not comply with the definitions of special compensation pursuant to California Code of Regulations Section 571(a). Specifically, OAS noted the City did not have a comprehensive written labor policy or agreement to determine the reportability of numerous items of skill pay, including floor warden. To determine reportability and amount of floor warden pay, it is necessary to reference multiple documents, including the salary resolution and health and safety manual. Therefore, this item of special compensation was not reportable because reportable special compensation must be in a written labor policy or agreement and must not reference another document in lieu of disclosing the item of special compensation.

Furthermore, special compensation should not be included in base payrate and regular earnings as noted in finding three, and should be reported separately.

Criteria:

Government Code: § 20160, § 20636(a), § 20636(c)(1)

California Code of Regulations: § 571(a), § 571(b)

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Observation 1: The City's hourly payrates listed on its pay schedule were not consistent with the monthly payrates.

OAS noted a variance between the hourly and monthly payrates in the pay schedules for all City employees. Specifically, the hourly rates on the pay schedule did not correspond with the monthly payrate. The City used an incorrect factor of 2,087 hours worked in a year to convert the annual and monthly payrates to hourly payrates for all employees. OAS' examination of payroll records showed all employees worked 40 or 56 hours per week. Therefore, the pay schedule should be based on 2,080 (40 hours x 52 weeks) or 2,912 (56 hours x 52 weeks) annual hours respectively. The City's salary schedule showed the hourly payrates for 40-hour employees exclusively and did not include the hourly payrate for employees who work 56 hours per week. The City did not clarify whether the monthly or hourly amount on the salary schedule was the approved full-time payrate; however, documentation reviewed by OAS supports the stance that the monthly amount is the accurate payrate.

The methodology used by the City for determining hourly payrates does not impact an employee's service credit. In addition, the City reported and paid their employees amounts consistent with the hourly calculation on the pay schedule. These reported amounts will be used in final compensation calculations in the event of a member's retirement. However, while their pay and reporting are consistent, we noted the hourly rate paid and reported to CalPERS calculates out to less than the monthly payrate per the pay schedule due to the City's use of the 2,087 hour factor instead of the correct 2,080 hour factor.

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Observation 2: The City's pay range in the salary schedules for Professionals and Executives were broad.

The City's 2008 Salary Resolution No. HD2407 did not show the payrate for each identified position in the Professional and Executive Group as a single amount or multiple amounts within a range; rather, it simply listed a broad range that did not include any amounts within the range. For example, the sampled low and high payrates on the 2011 salary resolution ranged from \$2,500 to \$25,000 per month. The broad ranges do not provide the public with sufficient information, which results in payrates that are not transparent.

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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 City 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: July 2013
Staff: Cheryl Dietz, CPA, Assistant Division Chief
Michael Dutil, CIA, Manager
Diana Thomas, CIA, CIDA, Manager
Chris Wall, Auditor
Edward Fama, Auditor

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APPENDIX A

BACKGROUND

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BACKGROUND

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.

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. 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.

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APPENDIX B

OBJECTIVES

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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 contract with CalPERS were followed.

This review covers the period of September 1, 2008 through August 31, 2011.

SUMMARY

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.

- ✓ 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 CalPERS listings
 - Other documents used to specify payrate, special compensation, and benefits for all employees
 - 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 correctly reported compensation.
- ✓ 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.
- ✓ Reviewed CalPERS listing reports to determine whether the payroll reporting elements were reported correctly.

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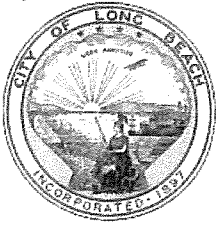
- ✓ Reviewed the City's enrollment practices for temporary and part-time employees to determine whether individuals met CalPERS membership requirements.
- ✓ Reviewed the City's enrollment practices for retired annuitants to determine if retirees were lawfully employed and reinstated when 960 hours were worked in a fiscal year.
- ✓ Reviewed the City's independent contractors to determine whether the individuals were either eligible or correctly excluded from CalPERS membership.
- ✓ Reviewed the City's affiliated entities to determine if the City shared employees with an affiliated entity and if the employees were CalPERS members and whether their earnings were reported by the City or by the affiliated entity.
- ✓ Reviewed the City's calculation and reporting of unused sick leave balances, if contracted to provide for additional service credits for unused sick leave.

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APPENDIX C

AGENCY RESPONSE

Note: The City provided an attachment to the response that was intentionally omitted from this appendix.



CITY OF LONG BEACH

DEPARTMENT OF FINANCIAL MANAGEMENT

333 West Ocean Boulevard 6th Floor • Long Beach, CA 90802 • (562) 570-6770 • Fax (562) 570-5836

REVISED Response

June 27, 2013

Ms. Margaret Junker
Chief
Office of Audit Services
CalPERS
P.O. Box 942701
Sacramento, CA 94229-2701

Dear Ms. Junker:

The City of Long Beach (City) has reviewed and considered each of the findings as identified in the attached Public Agency Audit (Attachment 1). This response addresses those findings. We appreciate the professionalism of your staff during this review, particularly auditor Edward Fama. We look forward to the continued positive relationship the City maintains with CalPERS.

It has been and is the City's intention to comply with the California Government Code and Regulations as noted in this audit. The City is of the opinion that it is not in violation of Public Employees' Retirement Law (PERL) for many of the findings. Those situations are noted along with information supporting the City's position it is in compliance. Of note, is that the audit frequently cites the "Public Agency & Schools Reference Guide." However, this document expressly includes the disclaimer that as a "guide only" it "cannot be relied upon as an authoritative source for the law, practices, or policies of CalPERS." Finally, the City is very concerned that in an attempt to provide oversight to prevent pension abuses, that CalPERS may be attempting to impose burdensome and costly reporting and processing requirements on employers that go beyond reasonable and customary pension reporting. Instead of imposing burdensome and costly requirements on the City, we would think it is more appropriate to have the audit report reflect a systematic review to ensure compliance with PERL, along with observations related to desired practices reflected in the Public Agency & Schools Reference Guide.

In any event, the City gives its assurance that it will work with the Customer Account Services and the Benefit Services Divisions on the respective findings accordingly. Our contact person remains Francine Wiegelman at (562) 570-6770. CalPERS staff should feel free to contact her. You may also contact me with regard to any items in this letter or any general problems or concerns that may arise. I am available at (562) 570-6427.

Finding #1: The City did not report items of special compensation

The City agrees that the uniform and uniform maintenance allowance compensation paid, or the monetary value provided, should be in a written policy agreement. The City will work to ensure that the value of uniform and uniform maintenance is reported in a written policy or agreement. This may take some time due to the fact that the changes must be negotiated with employee groups as part of contract negotiations.

The City agrees that the value of the uniform allowance and Employer Paid Member Contribution was not reported to CalPERS for one individual. This was a result of a programming error corrected during October 2011. The individual in question was employed by the City for four months.

Finding #2: The City erroneously reported non-reportable compensation to CalPERS

The City disagrees that it erroneously reported non-reportable compensation to CalPERS. The special compensation referred to in this finding is in compliance with Section 571 subsection (a). The City concurs that in some cases the City's reference of special compensation may not be titled as noted in Section 571 (a), but the task/skill requirement of (a) is met. In any event, the City is reviewing all skill and incentive pay and is in the process of cross-referencing City titles with CalPERS titles to ensure they are consistent with CalPERS nomenclature to avoid this concern in the future. If any skill pays are found to be out of compliance with Section 571, they will be corrected. The City will work to ensure that this occurs as soon as practically possible. This may take some time due to the fact that the changes must be negotiated with employee groups as part of contract negotiations.

For the individuals referenced, the following additional clarification is provided:

- City special compensation of wheeled motor sweeper is the equivalent of "Heavy/Special Equipment Operator" – Compensation to employees who are routinely and consistently assigned to operate heavy equipment or specialized equipment under Section 571 subsection (a).
- City special compensation of helicopter observer pay is the equivalent of "Flight time Premium" – Compensation to safety employees for time spent as co-pilot or crew on work-related air missions under Section 571 subsection (a).
- City special compensation of non-platoon schedule pay is the equivalent of "Fire Staff Premium" – Compensation to rank and file local firefighters who are routinely and consistently assigned to administrative work during normal hours of employment that may differ from the work schedule of fire personnel under Section 571 subsection (a).

Finding #3: The City incorrectly combined and reported special compensation with base payrate and regular earnings

The City disagrees that it incorrectly combined and reported special compensation with the base payrate. The City has always reported special compensation based on hourly

rates as part of the hourly rate to CalPERS and the practice has heretofore been accepted by CalPERS. This reporting is also in compliance with the Fair Labor Standards Act. With the recent implementation of MyCalPERS, CalPERS has recommended, but has not required, separate reporting of base pay and special compensation. The City is not aware of any CalPERS requirement or deadline for the implementation of separate reporting and views this as a recommendation. Moreover, there does not appear to be language in the Government Code requiring an agency to report these items separately. The City continues to cooperate with CalPERS staff when staff calls for clarification of salary information upon an employee's retirement.

Finding #4: The City reported payrates that failed to qualify as compensation earnable

The City disagrees it reported payrates that failed to qualify as compensation earnable. The City Attorney's payrate is documented in the City's Salary Resolution publicly adopted in 1995 and reaffirmed each year thereafter. The City's Salary Resolution, a publicly adopted document, expressly provides that: "[e]ffective July 1, 1995 and every July 1 thereafter, the annual salary of all elected officials will be adjusted in accordance with the provisions of Section 203 of the City Charter." Section 203 of the City Charter provides for an automatic adjustment every July 1 equivalent to the most recent upward change in the annual CPI for the Los Angeles-Long Beach-Anaheim metropolitan area. The assertion that a particular City Salary Resolution was adopted after July 1, 2009 is irrelevant because prior to that date, there was a previously duly adopted, publicly available Salary Resolution document that provided for the payrate.

Finding #5: The City reported incorrect payrate increases to CalPERS

The City disagrees that it reported incorrect payrate increases to CalPERS. When a pay increase is effective within the middle of a pay period, the City has reported an average hourly rate for that pay period. The City has always reported in this manner and CalPERS has always accepted this type of reporting. This reporting has no impact on the pension calculation. The City is currently working to review its current payroll system and the ability to program for separate payrate reporting, and, if feasible, will consider implementing the reporting of split payrates. However, the City does not believe there is a law or regulation that explicitly requires splitting payrates in the middle a pay period.

Finding #6: The City reported incorrect work schedule codes to CalPERS

The City disagrees that it reported incorrect work schedule codes. We are not aware of any law or regulation that the City violated. The audit finding appears to be solely based on the Public Agency & Schools Reference Guide, a document that expressly includes the disclaimer that it "cannot be relied upon as an authoritative source for the law, practices, or policies of CalPERS." However, the City is willing to review the current payroll system and, if feasible, implement this reporting change.

Finding #7: The City did not reinstate retired annuitants that worked more than 960 hours in a fiscal year

The City agrees that one retired annuitant, who worked 1,331 hours in the 2009-10 fiscal year, was not reinstated. This error has been resolved for the future by improving communication with both departments and retired annuitants about the CalPERS regulations. The individual in question is not working in any capacity with the City at this time.

The City does not agree that the other two retired annuitants should have been reinstated. The City's intent and policy is to not allow retired annuitants working for the City to exceed the allowed limits. The City's report used for monitoring hours worked for retired annuitants was programmed to keep track of total hours worked based on the dates employees were paid, not on the actual days that they worked within the fiscal year. For the two individuals in question, the report showed that they worked 908 and 922 hours, respectively. However, the City acknowledges that, while it meticulously monitored retired annuitant hours using the report to ensure compliance, the difference in methodology used by CalPERS and the City in calculating the hours could result in the finding of 961 and 962 hours for these two annuitants.

To help ensure that we remain in compliance in the future and avoid misleading information, the monitoring report has been reprogrammed to report hours worked from July 1 through June 30 for each fiscal year.

Finding #8: The City incorrectly classified an employee as an independent contractor

The City agrees it had classified this employee as an independent contractor. The City places great importance on properly classifying and enrolling employees into CalPERS membership provided they are eligible. Substantial effort is used to ensure this. While this finding is correct as to the particular individual, it is an isolated situation that is not reflective of our practices or normal results. Prior to the audit, the City was in the process of discussion, development, and approval of an appropriate classification specification for the unique duties provided to the City by this individual. It was the intent of the City to properly classify this individual as an employee. Unfortunately, this process took longer than it should have. The process was completed during the audit review and the person is now properly classified.

Finding #9: The City did not timely enroll part-time employees that worked more than 1,000 hours in a fiscal year

The City agrees it did not timely enroll the part-time employees noted in the report. The omission was a result of two issues: a programming issue for a report and new staff reviewing the report. The report used for monitoring part-time employees was programmed to keep track of hours worked based on the dates employees were paid, not on the actual days that they worked within the fiscal year. To help ensure that we remain in compliance in the future, a monitoring report has been reprogrammed to report hours worked from July 1 through June 30 for each fiscal year.

Additional staff training was provided on both the procedure for reviewing the report and for the immediate enrollment of any individual required to be enrolled in CalPERS. With the availability of MyCalPERS, the City now immediately enrolls the individual online.

Finding #10: The City incorrectly reported the balance of unused sick leave

The City disagrees that it incorrectly reported the balance of unused sick leave to CalPERS. Government Code Section 20965 requires that local employees be credited with sick leave "...at retirement with 0.004 year of service credit for each unused day of sick leave certified to the board by the employee's employer." The language of the statute clearly specifies that the employer is responsible for certifying the number of days of unused sick leave. Under the City's Personnel Ordinance, Section 2.10 (e), a safety member's sick leave accruals are converted at the time of retirement in accordance with formulas that were publicly adopted and available for review. See attached Personnel Ordinance, Sections 2.10, 2.12, and 2.13 (Attachment 2). The City is required, by its own Ordinance, to follow this conversion process prior to reporting the amount of unused sick leave accruals to CalPERS. As a result, the City is correctly calculating unused sick leave in compliance with the City's Ordinance and in compliance with the Government Code. The remaining reference for the details of this finding is the "Public Agency & Schools Reference Guide," which states that the content within the guide "cannot be relied upon as an authoritative source for the law, practices, or policies of CalPERS."

Finding #11: Certain skill pay reported by the City as special compensation did not comply with California Code of Regulations 571.

The City does not concur. The City believes that it was in compliance with the special compensation provisions of California Code of Regulations Section 571 effective during the audit period.

- The prohibition of special compensation pay being referenced in another document was added to Section 571 in August 2011. This was the last month of the audit period covered. The City cannot be out of compliance with a regulation that did not exist for the time period under audit review. Even if the change in this code section had been added earlier, it would take time for the City to perform the required interactions with affected employee groups to allow for implementation.
- As for the references to Findings 2 and 3, please refer to our earlier responses for these findings.

The City has a particular concern with Finding 11. It appears that this finding resulted not from the audit, but rather from a City appeal of a decision by a CalPERS operations unit. The City believes that the use of the CalPERS audit function in this manner, if that is what happened, transcends appropriate business practices and potentially detrimentally impacts employer relations. It would have been more appropriate for the CalPERS operations unit to handle the issue directly.

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Notwithstanding the above comments, the City intends to comply in the future to the new requirement as soon as it is able to make the required changes.

Again, thank you for the opportunity to respond to these findings. We appreciate the thoroughness of your review and the care you have taken and are taking to work with the City of Long Beach.

Sincerely,



John Gross
Director of Financial Management

JG:FW
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ATTACHMENTS

CC: ANTHONY SUINE, CHIEF, BNSD, CALPERS
KAREN DEFRAK, CHIEF, CASD, CALPERS
DEBORAH R. MILLS, DIRECTOR OF HUMAN RESOURCES
KENNETH A. WALKER, MANAGER-PERSONNEL OPERATIONS
CHRISTINA CHECEL, SENIOR DEPUTY CITY ATTORNEY