



California Public Employees' Retirement System  
Office of Audit Services  
P.O. Box 942701  
Sacramento, CA 94229-2701  
TTY: (916) 795-3240  
(916) 795-0900 phone, (916) 795-4023 fax  
[www.calpers.ca.gov](http://www.calpers.ca.gov)

June 26, 2012

Employer Code: 1093  
CalPERS ID: 3093388325  
Job Number: P11-006

City of Norco  
Andy Okoro, Finance Director  
2870 Clark Ave  
Norco, CA 92860

Dear Mr. Okoro:

Enclosed is our final report on the results of the public agency review completed for the City of Norco. Your agency's written response, included as an appendix to the report, indicates agreement with the issues noted in the report, with exception to Finding 4. Based on the information contained in your City's response pertaining to Finding 4, 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  
Rand Anderson, Acting Chief, APSD, CERBT  
Honorable City Council Members, City of Norco

# **Office of Audit Services**



## **Public Agency Review**

### **City of Norco**

**Employer Code: 1093**  
**Job Number: P11-006**

**June 2012**

---

# CITY OF NORCO

---

## TABLE OF CONTENTS

<u>SUBJECT</u>	<u>PAGE</u>
Results in Brief.....	1
City Background.....	1
Scope.....	2
Office of Audit Services Review Results .....	4
Finding 1: Compensation Earnable .....	4
Finding 2: Compensation Earnable Not Properly Outlined.....	5
Finding 3: Work Schedule Code.....	6
Finding 4: Retired Annuitants.....	7
Finding 5: Unused Sick Leave.....	10
Finding 6: Health Benefits Documentation .....	11
Conclusion .....	12
CalPERS Background.....	Appendix A
Objectives .....	Appendix B
Criteria .....	Appendix C
City's Written Response .....	Appendix D

---

# CITY OF NORCO

---

## RESULTS IN BRIEF

The Office of Audit Services (OAS) reviewed the City of Norco's (City) enrolled individuals, member compensation, required health, retirement, and California Employers' Retiree Benefit Trust (CERBT) 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:

- The Value of Employer Paid Member Contributions (EPMC) was not reported on uniform allowance.
- Fair Labor Standards Act (FLSA) premium pay was not outlined in a written labor agreement.
- A work schedule code was incorrectly reported.
- A retired annuitant did not meet the bona fide separation requirement prior to returning to work for the City.
- A retired annuitant received a payrate that exceeded the amount paid to other employees performing comparable duties.
- A retired annuitant was incorrectly classified as an independent contractor.
- Unused days of sick leave were not properly certified.
- An Affidavit of Parent-Child Relationship for a dependent enrolled in CalPERS Health Benefits Program was not on file.

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 Norco was incorporated as a general law city in 1964 and operates under the Council-Manager form of government. Under this form of government, policy-making and legislative authority are vested in the City Council consisting of five members elected at large. The City's major operations include fire protection, construction and maintenance of streets, trails and other infrastructure, recreational activities and cultural events, sanitation and water services, street lighting, planning and zoning, and animal control services. Resolutions 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 April 3, 1976, to provide retirement benefits for local safety fire employees and local miscellaneous employees. The

---

# CITY OF NORCO

---

City's current contract amendment identifies the length of the final compensation period as twelve months for local safety fire employees and three years for miscellaneous employees. The City contracted with CalPERS effective May 1, 1984, to provide health benefits to all eligible employees. The City contracted with CalPERS to participate in the CERBT effective September 22, 2008.

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 documentation.

## SCOPE

As part of the Board approved plan for fiscal year 2010/2011, the OAS reviewed the City's payroll reporting, member enrollment, payment records, and participant data processes, as these processes relate to the City's retirement, health and CERBT 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 from August 22, 2011, through August 25, 2011. The

---

## **CITY OF NORCO**

---

review objectives and a summary of the procedures performed, sample sizes, sample periods and findings are listed in Appendix B.

---

# CITY OF NORCO

---

## OFFICE OF AUDIT SERVICES REVIEW RESULTS

**Finding 1:** The City did not report the value of EPMC on uniform allowance for a sampled Battalion Chief.

***Recommendations:***

The City should ensure EPMC is reported on all items of special compensation for groups of employees who are authorized to receive this benefit.

OAS recommends CASD work with the City to assess the impact of this non-reporting issue and determine what adjustments, if any, are needed.

***Conditions:***

The Norco City Council passed and adopted Resolution 2007-13 authorizing the City to pay and report the value of EPMC for employees of the Norco Battalion Chiefs Association. The effective date of the resolution was July 1, 2007.

OAS reviewed the compensation paid and reported in service period 5/11-4 for one sampled battalion chief. The City correctly paid and reported the value of EPMC during this period with one exception. The City did not report the value of EPMC on the sampled employee's uniform allowance. The uniform allowance was \$120.00; therefore, EPMC was understated by \$10.80 in the 5/11-4 service period.

***Criteria:***

Government Code § 20160, § 20636(c)(4)

California Code of Regulations § 571(a)(1)

---

# CITY OF NORCO

---

**Finding 2:** The City's written labor policy or agreement did not identify the methodology used for calculating FLSA premium pay.

***Recommendation:***

The City should ensure that the calculation and payment of FLSA is contained in a current written labor policy or agreement as defined in Government Code Section 20049.

OAS recommends CASD work with the City to ensure the provision for paying FLSA is contained in an appropriate written labor policy or agreement.

***Condition:***

Shift fire personnel were required to work an average of 56 hours per week as their normal workweek. The firefighters' resolution states, "Shift hours shall be computed on a twenty-eight (28) day cycle." However, the resolution did not provide further explanation of the calculation of FLSA.

The City stated FLSA was paid and reported for shift personnel on an averaged basis each pay period. Specifically, the City paid shift personnel FLSA at 6.2 hours per pay period. The City was unable to provide any resolution, policy, or labor agreement outlining the City's policy on calculating and paying FLSA premium pay. OAS determined the City paid and reported FLSA premium pay for the sampled employees; however, the City did not properly outline the calculation and payment of FLSA premium pay in a written labor policy or agreement. Therefore, OAS was unable to verify if FLSA premium pay was properly reported to CalPERS.

***Criteria:***

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

California Code of Regulations § 571(b)



---

# CITY OF NORCO

---

**Finding 3:** The City reported an incorrect work schedule code.

***Recommendation:***

The City should report work schedule codes that correspond to the hours of the normal full-time work schedule for employees in the same work group.

OAS recommends CASD work with the City to assess the impact of this incorrect reporting and determine what adjustments are needed.

***Condition:***

The City reported an incorrect work schedule code for the City Manager. The City reduced the work week to 36 hours for all miscellaneous employees. However, the City incorrectly reported the City Manager's work schedule code as 173, which indicated a 40 hour work week. The City should have reported a work schedule code of 156 when reporting a monthly payrate.

The work schedule code is a three digit numeric code used in calculating both the employer rate and member's retirement benefit. It identifies the full-time employment for employees in the same work group, such as by department or duties, but not by individual employee. Approved work schedule codes range from 34 to 60 hours per week. A work schedule code of 156 is used for full-time employees working 36 hours per week.

***Criteria:***

Government Code § 20636

---

# CITY OF NORCO

---

**Finding 4:** The City incorrectly:

- Classified a retired annuitant as an independent contractor.
- Paid a retired annuitant a rate of pay that exceeded the rate of pay paid to employees performing comparable duties.
- Employed a retiree who did not have a bona fide separation from employment prior to returning to work with the City.

***Recommendation:***

The City should ensure that retired annuitants who work under the direction and control of the City are correctly classified as employees, and that employees so classified work under the terms and conditions established in Article 8, Employment After Retirement, of the Public Employees' Retirement Law (PERL). The City should also ensure that compensation paid to retired annuitants does not exceed the amount paid by the City to other employees performing comparable duties. Furthermore, the City should not employ a CalPERS retired annuitant who has not yet attained normal retirement age, as defined in California Code of Regulations Section 586.1, unless the annuitant has met bona fide separation requirements as defined in California Code of Regulations Section 586.2.

OAS recommends BNSD work with the City to assess the impact of these issues and determine what adjustments are needed. Also, BNSD should 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:***

Incorrect Classification

The City incorrectly classified a retired annuitant as an independent contractor. Using a common law test as a guide in determining independent contractor status, OAS determined the retired annuitant was a City employee, not an

---

# CITY OF NORCO

---

independent contractor. OAS identified common facts which included, but were not limited to:

- The City contracted with the annuitant to perform services as the Building Official for the City of Norco, a City established position.
- The annuitant worked under the supervision of the City Public Works Director.
- The annuitant was provided with office space, a computer, a desk and equipment.
- The City provided the annuitant with business cards identifying the annuitant as the "contract City Building Official."

OAS found the annuitant retired from another CalPERS contracted agency effective April 16, 2009. Therefore, the retiree was limited to various government codes listed under Article 8 "Employment after Retirement" of the PERL.

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.

## Rate of Pay Limitation

OAS determined the individual was subject to a rate of pay limitation under Government Code Section 21224 based on his appointment and length of service in the position. The appointment exceeded 12 months; therefore, the employee's rate of pay was limited to that paid by the employer to other employees performing comparable duties. The retiree received \$100 per hour for performing duties consistent with the Building Official. However, the highest listed pay rate on the salary schedule for the Building Official position was \$47.0833 per hour. The Director of Public Works highest pay rate was \$60.2032 per hour and the City Manager's hourly payrate was \$87.0641. Therefore, OAS determined, the retired annuitant's payrate exceeded the amount paid to other employees performing comparable duties.

## Bona Fide Separation Requirement

In addition to the rate of pay issue noted above, the retiree was reviewed for bona fide separation. The annuitant had an effective separation date of April 16, 2009, from another CalPERS agency at the age of 53. The annuitant was classified under a 2.7 percent at 55 retirement formula while employed at the

---

## CITY OF NORCO

---

other agency; therefore, the annuitant retired prior to attaining a normal age of retirement. As a result, the annuitant was required to have a bona fide separation before being rehired per Government Code Section 21220.5 and California Code of Regulations Section 586.2. Section 586.2 defines a bona fide separation in service, in part, as “no predetermined agreement between the employer and the member prior to retirement to return to work for the employer after retirement.” City records showed the employee signed an employment contract with the City of Norco effective March 9, 2009, prior to the effective retirement date of April 16, 2009, with the other agency.

***Criteria:***

Government Code § 20160, §21220, §21220.5 § 21224 (a)

California Code of Regulations § 586.1 and 586.2

---

# CITY OF NORCO

---

**Finding 5:** The City incorrectly certified unused sick leave balances for retiring employees.

***Recommendation:***

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

OAS recommends BNSD make necessary adjustments to retired members' retirement allowances upon obtaining appropriate documentation.

***Condition:***

The City did not correctly certify hours of unused sick leave for two sampled retirees. Specifically:

- One sampled retiree cashed out a portion of unused sick leave and had a balance of 40.247 days remaining on the books. However, the City did not certify any hours of sick leave for the retiree on the retirement application or amended certification form. Therefore, the retiree's unused sick leave was understated.
- A second sampled retiree did not have a sick leave balance at the time of retirement based on the City's policy established in the employee's resolution for contracted benefits. In order for the City to report hours of unused sick leave for an employee who is retiring, the retiree must meet the years of service established by City resolution. The sampled retiree was required to have five years of service with the City; however, was employed with the City for less than five years. Therefore, the City reduced the unused sick leave balance to zero upon retirement, since he did not meet the years of service. However, the City incorrectly certified 38.0312 days of unused sick leave on the retiree's retirement application. Therefore, the retiree's unused sick leave was overstated.

***Criteria:***

Government Code § 20160, § 20965

---

# CITY OF NORCO

---

**Finding 6:** The City did not properly maintain the Affidavit of Parent-Child Relationship for a member's dependent child.

***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 missing documentation and to cancel enrollment of any person who is found to be ineligible to participate in the CalPERS Health Benefits Program.

***Condition:***

Effective January 1, 2011, the City was required to have members with economically dependent children enrolled as dependents complete an Affidavit of Parent-Child Relationship (HBD-40). The form replaced the Affidavit of Economically Dependent Child (HBD-35). The HBD-40 was revised to include an annual certification by the member and employer. The City had the HBD-35 on file for the sampled employee's dependent; however, the HBD-40 was not on file prior to the on-site field review.

***Criteria:***

Government Code § 20085, § 22775

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

---

# CITY OF NORCO

---

## 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  
Alan Feblowitz, CFE, Manager  
Carol Northrup  
Karen Harlan, CIA, CGAP

---

**CITY OF NORCO**

---

# **APPENDIX A**

## **BACKGROUND**



---

# CITY OF NORCO

---

## 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. CalPERS California Employers' Retiree Benefit Trust (CERBT) provides investment management, trust administration, and GASB 43 compliant reporting to California public employers who wish to pre-fund their Other Post-Employment Benefits (OPEB).

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.

---

**CITY OF NORCO**

---

# **APPENDIX B**

## **OBJECTIVES**

---

# CITY OF NORCO

---

## 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, health benefits, and CERBT contracts with CalPERS were followed.

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

## SUMMARY

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

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

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

---

# CITY OF NORCO

---

Sample Size and Period: Reviewed 15 employees covering two sampled service periods - the second service period in December 2010 (12/10-4) and the second service period in June 2011 (6/11-4). In addition, one council member was reviewed in the first service period of June 2011 (6/11-3).

**See Finding 1:** Value of Employer Paid Member Contributions (EPMC) was not reported on uniform allowance.

**See Finding 2:** The methodology for calculating the Fair Labor Standards Act (FLSA) premium pay was not outlined in a resolution or labor 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 14 sampled employees in the second service period in June 2011 (6/11-4). In addition, two employees with individual employment agreements were reviewed during the review period.

## No Finding

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

Sample Size and Period: Reviewed 15 sampled employees in service periods 12/10-4 and 6/11-4.

**See Finding 3:** An incorrect Work schedule code reported.

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

---

# CITY OF NORCO

---

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

## **No Finding**

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

Sample Size and Period: Reviewed two retired annuitants in fiscal years 2009/2010 and 2010/2011. In addition, one retiree classified as an independent contractor was determined to be in an employee/employer relationship and tested as a retired annuitant.

## **See Finding 4: Retired Annuitant**

- Incorrectly classified as an independent contractor.
- Did not meet bona fide separation requirement prior to employment
- Received a payrate that exceeded the amount paid to other employees performing comparable duties.

## Independent contractors

Sample Size and Period: Reviewed four independent contractors in review period

## **Refer to finding 4: Retired annuitant**

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

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

## **See Finding 5: Unused sick leave hours were not properly certified.**

---

# CITY OF NORCO

---

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

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

**See Finding 6:** Affidavit of Parent-Child Relationship, HBD-40, for a dependent enrolled in CalPERS Health Benefits Program was not on file.

Reviewed the City's participation in the California Employers' Retiree Benefit Trust (CERBT) Fund. Reviewed payroll and personnel records to determine whether the City accurately reported premiums paid directly to providers other than CalPERS and accurately reported participant data used in the OPEB cost valuation.

Sample Period: Fiscal year 2010/2011.

**No Finding.**

---

**CITY OF NORCO**

---

# APPENDIX C

## CRITERIA

---

# CITY OF NORCO

---

## CRITERIA

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.



---

# CITY OF NORCO

---

- (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 § 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)(4), states:

Special compensation may include the full monetary value of normal contributions paid to the board by the employer, on behalf of the member and pursuant to Section 20691, if the employer's labor policy or agreement specifically provides for the inclusion of the normal contribution payment in the compensation earnable.

---

# CITY OF NORCO

---

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....Premium pay for hours worked within the normally scheduled or regular working hours that are in excess of the statutory maximum workweek or work period applicable to the employee under Section 201 et seq. of Title 29 of the United States Code shall be included as special compensation and appropriately defined in those regulations.

Government Code, § 20965, states:

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

Government Code § 21220

(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

---

# CITY OF NORCO

---

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 § 21220.5.

A retired person who has not attained the normal retirement age shall have a bona fide separation in service to the extent required by the Internal Revenue Code, and the regulations promulgated thereunder, before working after retirement pursuant to this article. The board shall establish, by regulation, the criteria under which a bona fide separation is satisfied.

Government Code § 21224, subdivision (a) states:

A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system upon appointment by the appointing power of a state agency or public agency employer either during an emergency to prevent stoppage of public business or because the retired employee has 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, and the rate of pay for the employment shall not be less than the minimum, nor exceed that paid by the employer to other employees performing comparable duties.

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***

California Code of Regulations, § 571 subdivision (a)(1), states, in part:

The full monetary value of employer-paid member contributions (EPMC) paid to CalPERS and reported as an item of special compensation on behalf of all members in a group or class.

---

# CITY OF NORCO

---

The value of EPMC is calculated on all "compensation earnable" excluding the special compensation of the monetary value of EPMC paid to CalPERS by the employer under Government Code section 20636(c)(4) thus eliminating a perpetual calculation.

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.

California Code of Regulations § 586.1, states:

(a) The normal retirement age of a member shall be the later of:

(1) the age when the member is first eligible to retire pursuant to Article 1 through Article 5 of Chapter 12, Part 3, Division 5 of Title 2 of the Government Code: or

(2) the highest specified age applicable to the member in the benefit formula, where the highest specified age is defined as:

(A) 65 if the member is entitled to benefits under Government Code sections 21076 or 21100;

(B) 60 if the member is entitled to benefits under Government Code sections 21353 or 21354.3;

(C) 55 if the member is entitled to benefits under Government Code sections 21354; 21354.1, 21354.2, 21363, 21363.1, 21366, 21369, or 21369.1; and

(D) 50 if the member is entitled to benefits under Government Code sections 21362; 21362.2, 21363.3, 21363.4, or 21363.8.

(b) In the event an existing benefit formula is modified or a new benefit formula is enacted, the chief actuary may determine the normal retirement age until such time that the regulations may be amended.

California Code of Regulations § 586.2, states:

(a) For purposes of working for a CalPERS-covered employer after retirement pursuant to Article 8, of Chapter 12, Part 3, Division 5 of Title 2 of the Government Code, a member who has not attained normal retirement age shall have a bona fide separation in service. A bona fide separation in service is defined as:

(1) no predetermined agreement between the employer and the member prior to retirement to return to work for the employer after retirement: and

(2) a separation in service of at least 60 calendar days between the date of the member's retirement and the first day of work for the employer as a retired person. The 60 days shall commence on the day after retirement.

(b) Any retired person employed in violation of this regulation shall be subject to the consequences provided in Government Code section 21220.

(c) In the event an emergency has been declared as provided in Government Code Section 8558 that requires the employment of a retired person, the 60

---

# CITY OF NORCO

---

calendar day separation in service requirement set forth in subdivision (a)(2) of this regulation shall not apply.

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.

---

**CITY OF NORCO**

---

# **APPENDIX D**

## **CITY'S RESPONSE**



# CITY of NORCO

CITY HALL • 2870 CLARK AVENUE • NORCO CA 92860 • (951) 735-3900 • FAX (951) 270-5622

June 21, 2012

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

Dear Ms. Junker:

I am writing in response to your letter dated June 5, 2012 regarding California Public Employees' Retirement System (CalPERS) compliance review of the City's pension, health and California Employers' Retirement Benefit Trust (CERBT) contracts with CalPERS. Outlined below are the City's responses to the findings outlined in your draft report.

1. **Finding 1:** The City did not report the value of EMPC on uniform allowance for a sampled Battalion Chief.
  - **Response:** The City agrees with the finding that EPMC was understated by \$10.80 and will follow your recommendation to correct this error.
2. **Finding 2:** The City's written labor policy or agreement did not identify the methodology for calculating FLSA premium pay.
  - **Response:** This finding pertains to the FLSA premium pay of shift safety employees. The City agrees that the practice of paying 6.2 hours per pay period to shift safety employees was not included in the labor agreement with safety employees. However, the City believes that FLSA premium was properly calculated and reported to CalPERS based on the 6.2 hours FLSA premium pay per pay period. Although, the City does not currently have safety members, if and when the City does, this provision will be included in any labor agreement.
3. **Finding 3:** The City reported an incorrect work schedule code.
  - **Response:** The City agrees with this finding. The City has confirmed with CalPERS that this error did not result in any understatement or overstatement of reportable earnings or service credit for the affected employee. It was a clerical error involving the wrong choice of code.

## CITY COUNCIL

KEVIN BASH  
Mayor

KATHY AZEVEDO  
Mayor Pro Tem

BERWIN HANNA  
Council Member

HERB HIGGINS  
Council Member

HARVEY SULLIVAN  
Council Member

The new CalPERS reporting system which requires no coding will prevent this type of an error in the future.

4. **Finding 4:** The City incorrectly:

- Classified a retired annuitant as an independent contractor
- Paid a retired annuitant a rate of pay that exceeded the rate of pay paid to employees performing comparable duties
- Employed a retiree who did not have a bona fide separation from employment prior to returning to work for the City
- **Response:** All of the findings bulleted above relate to one individual. The premise of CalPERS' findings related to rate of pay and bona fide separation from previous employment prior to returning to work for the City are related to the finding regarding misclassification as an independent contractor. The City believes that the individual in question was properly retained as an independent contractor pursuant to a limited scope and limited duration independent contractor agreement. The scope of services is completed and this contractor has not done any work for the City since December 20, 2011.

5. **Finding 5:** The City incorrectly certified unused sick leave balance for retiring employees.

- **Response:** This finding applies to two retired employees. The City agrees with the finding that the balance of unused sick leave was understated for one retiree and overstated for another retiree. The necessary corrections were made and have been reported to CalPERS.

6. **Finding 6:** The City did not properly maintain the Affidavit of Parent-Child Relationship for a member's dependent child.

- **Response:** The City did obtain the required affidavit at the time of the qualifying event. The City was not aware that the CalPERS rules had changed, requiring annual re-certification. The required affidavit has been provided to CalPERS.



CalPERS Response  
Page 3  
June 21, 2012

If you have any questions regarding the City's response, please contact me at (951) 270-5650.

Sincerely,

A handwritten signature in black ink, appearing to read "V. Andy Okoro", written over a horizontal line.

V. Andy Okoro  
Deputy City Manager/Finance Director

Cc: Mary Lynn, Chief, BNSD, CalPERS  
Karan DeFrank, Chief, CASD, CalPERS  
Rand Anderson, Acting Chief, APSD, CERBT