

Office of Audit Services



CalPERS

Public Agency Review

City of Encinitas

**Employer Code: 1437
CalPERS ID: 7856446300
Job Number: P13-048**

October 2014



California Public Employees' Retirement System
Office of Audit Services
P.O. Box 942701
Sacramento, CA 94229-2701
TTY: (877) 249-7442
(916) 795-0802 phone, (916) 795-7836 fax
www.calpers.ca.gov

October 31, 2014

Employer Code: 1437
CalPERS ID: 7856446300
Job Number: P13-048

Courtney Barrett, Human Resources Manager
City of Encinitas
505 South Vulcan Avenue
Encinitas, CA 92024

Dear Ms. Barrett:

Enclosed is our final report on the results of the public agency review completed for the City of Encinitas (Agency). Your written response, included as an appendix to the report, indicates agreement with the issues noted in the report except for Findings 2B and Finding 4. We appreciate the additional information regarding Finding 2B and Finding 4 that you provided in your response. However, after consideration of this information, 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 Phyllis Miller
PHYLLIS MILLER, Acting Chief
Office of Audit Services

Enclosure

cc: City Council Members, City of Encinitas
Risk and Audit Committee Members, CalPERS
Matthew G. Jacobs, General Counsel, CalPERS
Anthony Suine, Chief, BNSD, CalPERS
Renee Ostrander, Assistant Chief, CASD, CalPERS

CITY OF ENCINITAS

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RESULTS IN BRIEF

The primary objective of our review was to determine whether the City of Encinitas (Agency) complied with applicable sections of the California Government Code, California Code of Regulations (CCR) and its contract with the California Public Employees' Retirement System (CalPERS).

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

- Pay schedule did not meet all the Government Code and CCR requirements.
- Special Compensation was not reported as required by CCR Section 571.
- Retired Annuitant was unlawfully employed.
- Unused sick leave balance was incorrect.

OAS did not identify any findings related to sampled employees subject to the Public Employees' Pension Reform Act of 2013 (PEPRA).

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

SCOPE

The Agency contracted with CalPERS effective October 31, 1987, to provide retirement benefits for local fire fighters and miscellaneous employees. By way of the Agency's contract with CalPERS, the Agency agreed to be bound by the terms of the contract and by the Public Employees' Retirement Law (PERL). The Agency also agreed to make its employees members of CalPERS subject to all provisions of the PERL.

As part of the Board approved plan for fiscal year 2013-14, the OAS reviewed the Agency's payroll reporting and member enrollment processes as these processes relate to the Agency's retirement contract with CalPERS. The review period was limited to the examination of sampled employees, records, and pay periods from July 1, 2010 through June 30, 2013. The on-site fieldwork for this review was conducted from March 24-27, 2014. The review objectives and a summary of the procedures performed are listed in Appendix A.

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OFFICE OF AUDIT SERVICES REVIEW RESULTS

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

Condition:

The Agency's pay schedule did not identify the position title for every employee position including the City Manager, Deputy City Manager, and City Council Members. In addition, the classification for Department Director was also not clearly defined on the salary schedule. The pay schedule listed Department Director twice on the pay schedule with two separate pay ranges. As a result, OAS needed a second document to verify the salary of the various Department Directors employed by the Agency.

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

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

Pay amounts reported for positions that do not comply with the pay schedule requirements cannot be used to calculate retirement benefits because the amounts do not meet the definition of payrate under Government Code Section 20636(b)(1). There are no exceptions included in Government Code Section 20636(b)(1).

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Recommendation:

The Agency should ensure pay schedules meet all the requirements of Government Code and CCR Section 570.5.

The Agency should work with CalPERS Customer Account Services Division (CASD) to make any necessary adjustments to active and retired members' accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 20636(a), § 20636(b)(1), § 20636(d)
CCR: § 570.5

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

Condition:

- A. The Agency did not report special compensation of Holiday Pay earned by an employee who was required to work on a holiday during the pay period ending February 1, 2013. The employee was required to work without regard to holidays and received additional compensation. The Agency's policy specify that employees who are required to work on approved holidays shall be compensated based on time and one-half of their regular rate of pay for hours worked. However, the additional compensation of Holiday Pay was not reported to CalPERS. Pursuant to CCR Section 571, Holiday Pay is a statutory item and should have been reported to CalPERS as special compensation.
- B. The Agency incorrectly reported special compensation of Holiday Pay for an employee as a lump sum instead of as earned. Specifically, the Agency reported \$2,206.67 in the pay period ending January 31, 2013 instead of when the Holiday Pay was earned. Pursuant to Government Code Section 20636(c)(3), the Agency shall identify the pay period(s) in which compensation was earned.
- C. The Agency incorrectly reported special compensation of Uniform Allowance as a lump sum instead of when earned for three employees. For example, the Agency reported Uniform Allowance of \$250.00 for an employee in the pay period ending April 26, 2013. The Agency provides an allowance for the purchase and maintenance of uniforms. Pursuant to Government Code Section 20636(c)(3), the Agency shall identify the pay period(s) in which compensation was earned.

Reportable special compensation is required to be contained in a written labor policy or agreement, available to all members in the group or class, part of normally required duties, performed during normal hours of employment, paid periodically as earned, historically consistent with prior payments for the job classification, not paid exclusively in the final compensation period, and not final settlement pay.

Recommendation:

The Agency should report Holiday Pay as special compensation for employees required to work on approved holidays.

The Agency should ensure special compensation is reported when earned.

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The Agency should work with CASD to make any necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

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

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3: The Agency unlawfully employed a retired annuitant.

Condition:

The Agency hired a retired annuitant to perform the duties of the Deputy City Engineer in fiscal year 2011-12. The retired annuitant's payrate as the Deputy City Engineer exceeded the maximum amount listed on the pay schedule. Specifically, during fiscal year 2011-12, the retired annuitant's payrate for Deputy City Engineer was \$85.00 per hour or the monthly equivalent of \$14,733.33, which exceeded the maximum monthly payrate shown on the salary schedule of \$10,865.00. Government Code specifies that the compensation for the appointment shall not exceed the maximum monthly base salary paid to other employees performing comparable duties as listed on a publicly available pay schedule, or its hourly equivalent.

Government Code Section 21220 addresses the conditions and consequences of unlawful employment of a person who has been retired under this system. The Government Code states that any retired member employed in violation of this article shall reimburse this system for any retirement allowance received during the period or periods of employment that are in violation of law, 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 and contribute toward reimbursement of this system for administrative expenses incurred in responding to this situation, to the extent the member is determined by the executive officer to be at fault.

The Government Code also states that any public employer that employs a retired member in violation of this article shall 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 and 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.

Recommendation:

The Agency should monitor the payrate of retired annuitants in order to ensure the Agency complies with applicable Government Codes.

OAS recommends the Agency work with CalPERS Benefit Services Division (BNSD) to determine the appropriate course of action.

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Criteria:

Government Codes: § 20160, § 21202, § 21220, § 21224

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4: Retiring members unused sick leave balance was incorrect.

Condition:

The Agency used a conversion method that resulted in unused sick leave credit being understated for all fire shift employees. The Agency's written labor policy for firefighters specified an incorrect conversion method of sick leave hours to days for retiring members. Specifically, the policy states that the sick leave balance is multiplied by the factor of .714 and divided by eight. However, a conversion factor of .714 should not have been applied. The Agency should have converted the retiring firefighter's sick leave hours to days by dividing the full amount of unused sick hours by eight to correctly determine the number of unused sick days. As a result of the incorrect application of sick leave conversion, sick leave credit was understated for all fire employees who worked an average of 56 hours per week. The PERL does not require an Agency to convert sick leave from the actual accrual rate of 15 hours to an eight hour accrual rate. The PERL only requires certification of only those days of unused sick leave that was accrued by the member during the normal course of employment. Therefore, regardless of a member's schedule, accumulated unused sick leave hours should be divided by eight to determine the number of days to report to CalPERS.

In addition, the Agency overstated a retiring member's sick leave balance by 10 days. The Agency's records indicated a sick leave balance of 250 days upon retirement instead of the 260 days reported to CalPERS.

Recommendation:

The Agency should ensure that a retiring employee's unused sick leave is reported to CalPERS at the rate in which it was earned and accurately certified so that the retiree receives the appropriate amount of service credit upon retirement. The Agency should use a divisor of eight (8) when converting hours of unused sick leave to days for certifying additional service credit to CalPERS.

The Agency should work with CASD to determine the impact of the membership requirement issue and determine what adjustments, if any, are needed, pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 20965

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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 A. OAS limited the test of transactions to employee samples selected from the Agency's payroll 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 Phyllis Miller
PHYLLIS MILLER, CPA, CIA,
Acting Chief, Office of Audit Services

Staff: Cheryl Dietz, CPA, Assistant Division Chief
Alan Feblowitz, CFE, Manager
Chris Wall, Manager
Vincent Antolini, Auditor

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APPENDIX A

OBJECTIVES

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OBJECTIVES

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

- Whether the Agency complied with applicable sections of the California Government Code (sections 20000 et seq.) and Title 2 of the CCR.
- Whether prescribed reporting and enrollment procedures as they relate to the Agency's retirement contract with CalPERS were followed.

SUMMARY

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

- ✓ Reviewed:
 - Provisions of the contract and contract amendments between the Agency and CalPERS
 - Correspondence files maintained at CalPERS
 - Agency Board minutes and Agency Board resolutions
 - Agency written labor policies and agreements
 - Agency salary, wage and benefit agreements including applicable resolutions
 - Agency personnel records and employee hours worked records
 - Agency payroll information including Contribution Detail Transaction History reports
 - Other documents used to specify payrate, special compensation, and benefits for employees
 - Various other documents as necessary
- ✓ Reviewed Agency payroll records and compared the records to data reported to CalPERS to determine whether the Agency correctly reported compensation.
- ✓ Reviewed payrates reported to CalPERS and reconciled the payrates to Agency public salary records to determine whether base payrates reported were accurate, pursuant to publicly available pay schedules that identify the position title, payrate and time base for each position, and duly approved by the Agency's governing body in accordance with requirements of applicable public meeting laws.
- ✓ Reviewed CalPERS reports to determine whether the payroll reporting elements were reported correctly.

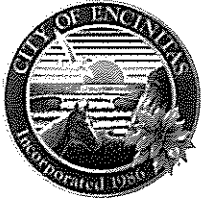
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- ✓ Reviewed the Agency's enrollment practices for temporary and part-time employees to determine whether individuals met CalPERS membership requirements.
- ✓ Reviewed the Agency's employment practices for retired annuitants to determine if retirees were lawfully employed and reinstated when 960 hours were worked in a fiscal year.
- ✓ Reviewed the Agency's independent contractors to determine whether the individuals were either eligible or correctly excluded from CalPERS membership.
- ✓ Reviewed the Agency's affiliated entities to determine if the Agency shared employees with an affiliated entity and if the employees were CalPERS members and whether their earnings were reported by the Agency or by the affiliated entity.
- ✓ Reviewed the Agency'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 B

AGENCY RESPONSE



*City of
Encinitas*

July 11, 2014

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

VIA: Email
US Mail
Fax

Dear Ms. Junker,

This correspondence is in response to your June 20, 2014 draft report of the California Public Employees Retirement Systems (CalPERS) review of the City of Encinitas that was received on June 30, 2014. Your June 20, 2014 transmittal letter requires a written response about whether we agreed with the recommendation in the draft report by July 11, 2014. This response includes consideration to both the draft audit findings provided with your June 20, 2014 correspondence and a telephone call with Chis Wall on July 2, 2014.

Individual responses to the "RESULTS IN BRIEF" can be found below.

1. Pay schedule did not meet all of the requirements CCR Section 570.5

- **The audit states that the City did not identify the position and title for the City Manager, Deputy City Manager and City Council Members.**

City response: We agree with the audit findings. While the City Council did individually adopt pay ranges for each of these positions, we agree that the City's adopted pay schedule did not include this information. The City has taken all appropriate steps to comply with CCR Section 570.5 by adopting a pay schedule on June 11, 2014 that contains all positions and titles (Attachment A).

Per instructions from CalPERS, the City will wait to be contacted by the Customer Account Services Division in order discuss any adjustments that may be required.

- **The audit states that two Department Director positions were approved with multiple salary ranges.**

City response: We agree with the audit finding. The City adopted updated pay ranges and titles. The Department Director classifications now mirror other multi- level classifications within the City. There is now the ability to easily identify the level and salary for employees within this classification. The City believes there are no other actions required at this time.

2. The Agency did not report special compensation as required.

- **The audit states that the City did not report to CalPERS special compensation of Holiday Pay earned by an employee who was required to work on a holiday during the pay period. Pursuant to CCR Section 571, Holiday Pay is a statutory item and should have been reported to CalPERS as special compensation.**

City response: The City agrees with the audit finding. The City has updated its payroll system to report these hours in accordance with CCR 571.

Per instructions from CalPERS, the City will wait to be contacted by the Customer Account Services Division in order discuss any retroactive adjustments that may be required.

- **The audit states that the City reports Holiday payouts for shift personnel were incorrectly reported as lump sum instead of as earned.**

City response: The City disagrees with this finding. The Memorandum of Understanding for this group specifically lists when Holiday payouts are accrued and paid.

However, if the final findings require the City to update this process the City will work with the impacted bargaining unit to negotiate the impact of any changes.

Per instructions from CalPERS, the City will wait to be contacted by the Customer Account Services Division in order discuss how to proceed given the specific contract language.

- **The audit found that the City reported uniform allowance as a lump sum instead of when earned.**

City response: The City agrees with the audit finding. The City has updated procedures to report uniform allowance when it is earned, rather than on an annual basis effective July 1, 2014.

Per instructions from CalPERS, the City will wait to be contacted by the Customer Account Services Division in order discuss any retroactive adjustments that may be required.

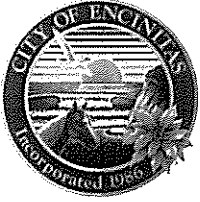
3. The Agency unlawfully employed a retired annuitant.

The audit found that the City hired a retired annuitant to perform work at a rate that exceeds the maximum monthly pay rate shown on the salary schedule.

City response: The City agrees with the audit finding. The annuitant was paid at a rate that exceeded the maximum monthly pay rate shown on the salary schedule. However, the City disagrees with the reinstatement of this employee. This annuitant stopped working for the City in December 2012. Reinstating this employee would cause the City not to report the hours based on findings in Section 1 above.

The City currently is not employing any retired annuitants and will comply with Government Code Section 2120 in the future.

Per instructions from CalPERS, the City will wait to be contacted by the CalPERS Benefit Services Division (BNSD) in order discuss any adjustments that may be required.



*City of
Encinitas*

4. Retiring members unused sick leave balance was incorrect.

- **The audit found that the City incorrectly stated in a Memorandum of Understanding that CalPERS required the conversion of shift employees' sick leave to retirement credit by multiplying available sick leave hours by .714 and then dividing by 8 in order to calculate how many days a person was credited for their sick leave balance.**


City response: The City agrees, in part, with this audit finding. The negotiated sick leave conversion is not required by CalPERS. However, the City believes that the intent of the existing negotiated Memorandum of Understanding is appropriate and enforceable.

- **The audit found that the City overstated a retiring member's sick leave balance by 10 days, reporting 260 days upon retirement instead of the accurate 250.**

City response: The City agrees that the conversion was done incorrectly. Per instructions from CalPERS, the City will wait to be contacted by the Customer Account Services Division in order discuss any retroactive adjustments that may be required.

Thank you for this opportunity to respond to the draft audit for the City of Encinitas.

Sincerely,


Courtney Barrett
Human Resources Manager

Attachment