

Office of Audit Services



CalPERS

Public Agency Review

City of Maywood

CalPERS ID: 4191618335
Job Number: P15-013

March 2017



California Public Employees' Retirement System
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March 23, 2017

CalPERS ID: 4191618335
Job Number: P15-013

Ofelia Mancera, Principal Accountant
City of Maywood
4319 East Slauson Ave
Maywood, CA 90270

Dear Ms. Mancera:

Enclosed is our final report on the results of the public agency review completed for the City of Maywood (Agency). Your written response, included as an appendix to the report, indicates agreement with the issues noted in the report with the exception of Findings 8 and 9. Your response states that you will continue to review these findings and work with CalPERS Employer Account Management Division to identify and make adjustments if necessary. In accordance with our resolution policy, we have referred the issues identified in the report to the appropriate divisions at CalPERS. Please work with these divisions to address the recommendations specified in our report. It was our pleasure to work with your Agency. We appreciate the time and assistance of you and your staff during this review.

Sincerely,

Original signed by Beliz Chappuie

BELIZ CHAPPUIE, Chief
Office of Audit Services

Enclosure

cc: Honorable Council Members, City of Maywood
Rueben Martinez, Interim City Administrator, City of Maywood
Risk and Audit Committee Members, CalPERS
Matthew G. Jacobs, General Counsel, CalPERS
Anthony Suine, Chief, BNSD, CalPERS
Renee Ostrander, Chief, EAMD, CalPERS
Carene Carolan, Chief, MAMD, CalPERS

CITY OF MAYWOOD

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CITY OF MAYWOOD

RESULTS IN BRIEF

The objective of our review was to determine whether the City of Maywood (Agency) complied with applicable sections of the California Government Code (Government Code), California Public Employees' Pension Reform Act of 2013 (PEPRA), California Code of Regulations (CCR) and its contract with the California Public Employees' Retirement System (CalPERS). Also, to determine whether the Agency implemented the recommendations proposed by the Office of Audit Services (OAS) upon the completion of a public agency review in April 2012.

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

- The Agency did not submit payroll reports or remit retirement contributions and payments within required timelines.
- The Agency did not enroll employees into membership as required.
- The Agency did not provide specific information deemed necessary to determine the correctness of retirement benefits and reportable compensation.
- The Agency did not have a pay schedule that met all of the Government Code and CCR requirements.
- The Agency did not report the monetary value of uniforms provided in accordance with the Government Code and CCR requirements.
- The Agency incorrectly reported payrates and earnings.
- The Agency incorrectly enrolled elected officials.
- The Agency incorrectly paid member contributions for its PEPRA members.
- The Agency misclassified an employee as an independent contractor and did not enroll the employee when eligible.
- The Agency did not report retired annuitant's information.
- The Agency did not maintain reciprocal self-certifications for PEPRA members.

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

CITY OF MAYWOOD

BACKGROUND

The Agency was incorporated on September 2, 1924, under the laws of the State of California and enjoys the rights and privileges applicable to a General Law City. It is governed by a five-member City Council.

In April 2012, OAS completed a public agency review of the Agency's payroll reporting and member enrollment processes. Results from the OAS review identified the following findings:

- Information deemed necessary to determine the accuracy of retirement benefits and reportable compensation was requested but was not provided.
- Common law employees were not properly enrolled into CalPERS membership.
- Payrates and special compensation reported to CalPERS failed to qualify as compensation earnable under the Public Employees' Retirement Law (the PERL).
 - Payrates were not reported in accordance with the Agency's publicly available pay schedules and not clearly authorized by the Agency's Governing Board.
 - Non-reportable compensation was reported.
 - Compensation earnable was not properly reported.
- Eligible part-time employees were not properly enrolled into CalPERS membership.
- An employee was mis-classified as a non-employee.
- Elected officials were not informed of optional membership rights.
- Retired annuitants were unlawfully employed.
- Retirement contributions and payroll reports were not submitted timely.
- Incorrect amounts of unused sick leave were certified to CalPERS.
- Payroll reporting elements were incorrectly reported.
- CalPERS ACES security procedures were not followed

In addition, the OAS review identified that the Agency eliminated its police department on July 1, 2010 after contracting with the Los Angeles County Sheriff's department to provide law enforcement services subsequent to June 30, 2010. As a result, the Agency stopped reporting police safety members to CalPERS.

CITY OF MAYWOOD

SCOPE

The Agency contracted with CalPERS effective June 1, 1974, to provide retirement benefits for local miscellaneous employees and local police officers. By way of the Agency's contract with CalPERS, the Agency agreed to be bound by the terms of the contract and the Public Employees Retirement Law (PERL). The Agency also agreed to make its employees members of CalPERS subject to all provisions of the PERL.

OAS reviewed the Agency's payroll reporting and member enrollment processes related to the Agency's retirement contract with CalPERS. The review was limited to the examination of sampled employees, records, and pay periods from July 1, 2011 through current operations. The review objectives and methodology are listed in Appendix A.

Similar to the OAS review previously completed April 2012, OAS requested pertinent information to determine whether compensation earnable and enrollment in the retirement system was properly reported to CalPERS. However, the following records and documents were not provided as requested:

- Written labor policies including employment contracts and Memoranda of Understanding
- Employer paid member contribution (EPMC) resolution
- City Council meeting minutes
- Personnel files
- Payroll records for FY 2012-13 and 2013-2014

OAS was able to perform additional procedures to complete the review based on information provided by the Agency and information obtained through other sources.

CITY OF MAYWOOD

OFFICE OF AUDIT SERVICES REVIEW RESULTS

1: The Agency did not submit payroll reports or remit retirement contributions within required timelines. In addition, the Agency was delinquent in payments dating back to January 1, 2013.

Condition:

CalPERS records show the Agency did not submit payroll reports for Fiscal Year 2011-12 and has underpaid employer contributions nearly every month from August 2013 through May 2016. In addition, the Agency is delinquent in payments to CalPERS consisting of arrears payments under Government Code Section 20283, administrative fees, 1959 survivor benefits, and employer contributions dating back to January 1, 2013. A majority of the unpaid employer contributions are for the non-payment of annual pension costs attributed to the Agency's safety retirement plan, which is inactive. The Agency is delinquent in payments totaling approximately \$2,897,000 composed of \$2,739,623 for outstanding arrears payments as noted below:

- \$693,557 for Fiscal Year ended June 30, 2013
- \$706,837 for Fiscal Year ended June 30, 2014
- \$781,428 for Fiscal Year ended June 30, 2015
- \$557,392 for Fiscal Year ended June 30, 2016

Government Code Section 20532 states that the contracting agency shall make the contributions for its employees as recommended by the actuary and approved by the board. CCR Sections 565 and 565.1 state that member and employer contributions shall be received by CalPERS within 15 days from the close of a pay period, and payroll reports shall be received within 30 days from the close of a pay period.

A similar finding was noted in the OAS report issued April 2012.

Recommendation:

The Agency should implement payroll procedures to ensure that retirement contributions are received at CalPERS within 15 days from the close of a pay period, and payroll reports are received within 30 days from the close of a pay period. In addition, the Agency should ensure unpaid employer contributions are remitted to CalPERS in accordance with their contract and the PERL.

CITY OF MAYWOOD

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

Criteria:

Government Codes: § 20160, § 20221, § 20283, § 20532, and § 20572
CCR: § 565 and § 565.1

CITY OF MAYWOOD

2: The Agency did not enroll employees into membership as required.

Condition:

The Agency did not enroll employees into membership and did not report payrates and regular earnings. The OAS review completed April 2012 identified the Agency misclassified 13 employees as independent contractors and recommended the Agency enroll the employees into membership with an effective date of July 1, 2010. The recommendation also stated that the Agency should report the employees' compensation earnable for the period in which the compensation was earned. Agency records showed that the employees received various amounts of compensation in FY 2010-11; however, OAS was unable to determine if the compensation paid to the employees was reportable. The Agency did not provide payroll records during the current review for FY 2012-13 and 2013-14; therefore, OAS was unable to determine if the employees received reportable compensation. Additionally, the Agency provided records that showed three of the 13 employees received settlement agreements that included compensation for services rendered. However, the Agency did not report the earnings for those employees. OAS was unable to determine whether compensation for services rendered described in the settlement agreement was reportable to CalPERS. Finding 3 discusses the necessity and requirements for providing requested information to determine the correctness of retirement benefits and reportable compensation under Government Code Sections 20221 and 20222.5.

A similar finding was noted in the OAS report issued April 2012.

Recommendation:

Agency should ensure employees are enrolled into membership and earnings are reported when required.

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

Criteria:

Government Codes: § 20028, § 20160, § 20221, § 20222.5, § 20283, § 20630, and § 20636

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3: The Agency did not provide specific information deemed necessary to determine the correctness of retirement benefits and reportable compensation.

Condition:

Prior to the on-site field visit in May 2016, OAS requested pertinent information to determine whether compensation earnable was properly reported to CalPERS. In addition, during and subsequent to our on-site field visit, OAS made several requests for information. However, the Agency did not provide OAS with the following documents:

- Written labor policies including employment contracts and Memoranda of Understanding
- Employer paid member contribution (EPMC) resolution
- City Council meeting minutes
- Personnel files
- Payroll records for FY 2012-13 and 2013-2014

A similar finding was noted in the OAS report issued April 2012.

Recommendation:

The Agency must provide information that CalPERS requires in the administration of the system per Government Code Sections 20221. The Agency must also provide information requested by CalPERS during the course of a review as deemed necessary for determining the correctness of retirement benefits and reportable compensation per Government Code Section 20222.5. Failure to provide requested information could result in the termination of the Agency's contract pursuant to Government Code Section 20572.

The Agency should work with EAMD and the CalPERS Benefit Services Divisions (BNSD) to provide all supporting documentation that can be located or prepared in the future in order to determine the correctness of retirement benefits, health benefits and reportable compensation.

Criteria:

Government Codes: § 20221, § 20222.5, and § 20572

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4: The Agency did not have a pay schedule that met all of the Government Code and CCR requirements.

Condition:

The Agency did not have a pay schedule that met all of the Government Code and CCR requirements. The schedule provided was contained in the Agency's Annual Operating Budget for Fiscal Years 2014-15 and 2015-16. Although the budget was adopted by the Agency's governing body, the pay schedule did not identify payrates for all positions. In addition, the schedule did not include an effective date, and the annual salaries for elected officials included non-reportable compensation, specifically a cell phone stipend. As a result, the schedule did not meet the requirements of Government Code Section 20636 and CCR Section 570.5.

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

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

Pay amounts reported for positions that do not comply with the payrate definition and pay schedule requirements cannot be used to calculate retirement benefits because the amounts do not meet the definition of payrate under Government Code Section 20636(b)(1). When an employer does not meet the requirements for a publicly available pay schedule, CalPERS, in its sole discretion, may determine an amount that will be considered to be payrate as detailed in CCR Section 570.5.

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A similar finding was noted in the OAS report issued April 2012.

Recommendation:

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

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

Criteria:

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

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5: The Agency did not report special compensation in accordance with the Government Code and CCR.

Condition:

- A. The Agency did not report the monetary value of uniforms provided to a Code Enforcement Officer. The monetary value of uniforms is a statutory item and should be reported to CalPERS as special compensation for classic CalPERS members as required by Government Code 20636(c)(6) and CCR Section 571.

A similar finding was noted in the OAS report issued April 2012.

- B. The Agency did not include the conditions for payment of the uniforms discussed above in a written labor policy. Specifically, the Agency did not have a written labor policy that identified the amount of special compensation as required by Government Code Section 20636 and CCR Section 571(b).

Reportable special compensation is defined in Government Code Section 20636 and CCR Section 571(a), and must be reported if it conforms with all of the requirements listed in CCR Section 571(b). Specifically, special compensation is required to be contained in a written labor policy or agreement indicating the eligibility and amount of special compensation. Also, special compensation must be available to all members in the group or class, part of normally required duties, performed during normal hours of employment, paid periodically as earned, and historically consistent with prior payments for the job classification.

Recommendation:

The Agency should ensure the monetary value of uniforms is reported as special compensation.

The Agency should identify the conditions for payment of special compensation in a written labor agreement.

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

Criteria:

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

CITY OF MAYWOOD

6: The Agency incorrectly reported payrates and earnings.

Condition:

- A. The Agency incorrectly reported payrate and regular earnings for the City Manager for the pay periods ended on December 12, 2015 through April 16, 2016. The City Manager was placed on administrative leave December 10, 2015 due to a pending termination, and the termination occurred on April 25, 2016. Although the City Manager did not work during this period, the Agency continued to report the City Manager's payrate and earnings of \$15,000 per month through the pay period ended April 16, 2016. Government Code Section 20630 defines compensation as payment for an employee's services performed during normal working hours, or for time during which the employee is excused from work. Compensation for a paid absence in anticipation of a termination is not reportable as regular earnings.

A similar finding was noted in the OAS report issued April 2012.

- B. The Agency did not report payrate and earnings for a Council Member and Code Compliance Officer II in the pay period ended May 30, 2015. In addition, the Agency hired a City Manager on April 13, 2016 to succeed the City Manager discussed in Finding 6A. However, the Agency did not report payrate and earnings for the new City Manager between April 13, 2016 and April 30, 2016. Subsequent to the OAS auditor's on-site fieldwork, the Agency began reporting payrate and earnings for the new City Manager effective May 1, 2016.
- C. The Agency incorrectly reported a Council Member's monthly payrate as hourly. The payrate for the pay periods ended February 22, 2014 and May 30, 2015 was \$556 per month. However, the Agency reported \$556.00 per hour in both pay periods.

Recommendation:

The Agency should ensure payrates and earnings are correctly reported.

The Agency should ensure only reportable compensation is reported.

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

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Criteria:

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

CITY OF MAYWOOD

7: The Agency incorrectly enrolled elected officials into membership.

Condition:

- A. The Agency incorrectly enrolled an elected official as an optional member. Specifically, the City Clerk is an elected position and was enrolled by the Agency as an optional member; however, the elected official did not file an election in writing with CalPERS to become a member. Government Code Section 20322 states that an elective officer is excluded from membership in the CalPERS retirement system unless the officer files an election in writing with CalPERS to become a member.

- B. The Agency did not enroll an elected official as an optional CalPERS member. The Agency provided a completed Optional Membership Form (AESD-59) indicating the elected official opted to become a CalPERS member. However, the Agency enrolled the elected official as a regular member instead of an optional member.

Recommendation:

The Agency should not enroll elected officials into CalPERS membership unless the officer files an election in writing with CalPERS to become a member. In addition, the Agency should ensure elected officials are identified as optional members when the officials are enrolled into membership.

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

Criteria:

Government Codes: § 20160 and § 20322

CITY OF MAYWOOD

8: The Agency incorrectly paid and reported member contributions for PEPRA members.

Condition:

The Agency incorrectly paid and reported the member contributions for its PEPRA employees. Specifically, the Agency paid the member contributions on behalf of the employees and reported the contributions as employer paid member contributions. The Public Employee's Pension Reform Act (PEPRA) of 2013 requires employees hired after January 1, 2013 to pay their own contributions.

Recommendation:

The Agency should stop paying the member contributions for PEPRA members and report the contributions to CalPERS as member paid.

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

Criteria:

Government Codes: § 20120, § 20121, § 20160, § 7522.04, and § 7522.30

CITY OF MAYWOOD

9: The Agency misclassified an employee as an independent contractor and did not enroll the employee when eligible.

Condition:

The Agency misclassified an employee as an independent contractor and did not enroll the employee into CalPERS membership upon meeting eligibility requirements. Specifically, the Agency hired the employee under a personal services agreement as a Contract Project Manager on September 27, 2010 and did not consider the individual to be an employee. However, based on the review of documents provided by the Agency and using a common law test, OAS concluded the individual was an Agency employee. More specifically, the Project Manager worked under the direction of the City Manager, operated under the Agency's name, and was required to attend meetings. The Project Manager was also provided with office space, office equipment, and email. Additionally, the Project Manager was required to work hours set by the City Manager and was personally required to do the work.

OAS reviewed the number of hours the employee worked from July 1, 2014 through May 31, 2015, and found the employee worked 1,980.50 hours. As a result, the employee qualified for membership after reaching 1,000 hours worked per Government Code Section 20305.

For the purposes of the PERL 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 Dec. 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 employee is the right of the principal to control the manner and means of job performance and the desired result and 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.

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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 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.

A similar finding was noted in the OAS report issued April 2012.

Recommendation:

The Agency should review the number of hours worked by the employee subsequent to their hire on September 27, 2010, and enroll the employee into membership no later than the first day of the first pay period of the following month after the employee reached 1,000 hours worked in a fiscal year. The Agency should report the employees' compensation earnable for the period in which the compensation was earned, and the Agency should submit retirement contributions on behalf of the employee. If EAMD determines the Agency knew or should have known of the individuals' eligibility, the Agency is required to pay all arrears costs for member contributions and administrative costs of five hundred dollars (\$500) pursuant to section 20283.

In addition, the Agency should ensure all employees are properly classified and enroll the employees once they meet CalPERS eligibility.

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

Criteria:

Government Codes: § 20160, § 20305, § 20630, and § 20636

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10: The Agency did not report retired annuitant information as required.

Condition:

The Agency did not report the payrate, hours worked, and earnings paid for two retired annuitants in my|CalPERS to allow monitoring of the 960-hour limit per fiscal year. The Agency hired the retired annuitants as independent contractors. However, as described in Finding 9, OAS uses a common law test to determine whether an individual is an independent contractor or an employee. By applying the common law test, OAS found the individuals to be employees of the Agency and were therefore subject to retired annuitant laws. One of the retired annuitants was hired as an Acting Accounting Supervisor. The Acting Accounting Supervisor worked under the direction of the City Manager, was personally required to perform the work, and the work was performed on the Agency premises. The work was formerly performed by an Agency employee and the employee did not perform the same services to the general public. The Acting Accounting Supervisor was also provided with office space, office equipment and was paid hourly by the Agency.

The second retired annuitant was hired as an Accountant. The Agency had the right to control how the work was performed and the work was directed, supervised and reviewed by an Agency employee. The Accountant was provided instruction on the manner or means of accomplishing the desired results by an Agency employee, the work hours were approved by the Accounting Supervisor, and the Agency had first call on the Accountant's time or services. The Accountant was also provided with office space, office equipment and was paid hourly by the Agency. Although the retired annuitants did not exceed 960 hours worked in the fiscal year tested, the Agency did not report the hours and compensation of the retired annuitants in my|CalPERS as required.

Recommendation:

The Agency should report the retired annuitants' information in my|CalPERS.

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

Criteria:

Government Codes: § 20120, § 20121, § 20122, and § 20160

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11: The Agency did not maintain the required member reciprocal self-certification.

Condition:

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

Recommendation:

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

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

Criteria:

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

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CONCLUSION

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

The findings and conclusions outlined in this report are based on information made available or otherwise obtained at the time this report was prepared. This report does not constitute a final determination in regard to the findings noted within the report. The appropriate CalPERS divisions will notify the Agency of the final determinations on the report findings and provide appeal rights, if applicable, at that time. All appeals must be made to the appropriate CalPERS division by filing a written appeal with CalPERS, in Sacramento, within 30 days of the date of the mailing of the determination letter, in accordance with Government Code Section 20134 and Sections 555-555.4, Title 2, of California Code of Regulations.

Respectfully submitted,

Original signed by Beliz Chappuie

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

Staff: Alan Feblowitz, CFE, Assistant Division Chief
Chris Wall, MBA, Senior Manager
Dennis Szeto, Lead Auditor
Zach Barlow, Auditor
Earl Hsu, CFE, Auditor

CITY OF MAYWOOD

APPENDIX A

OBJECTIVES

CITY OF MAYWOOD

OBJECTIVES

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

- Applicable sections of the Government Code (Sections 20000 et seq.), PEPRA, and Title 2 of the CCR.
- Reporting and enrollment procedures prescribed in the Agency's retirement contract with CalPERS.
- OAS recommendations from the April 2012 review.

METHODOLOGY

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

- ✓ Reviewed:
 - Provisions of the contract and contract amendments between the Agency and CalPERS
 - OAS April 2012 public agency report
 - 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 time records
 - Agency payroll information including Contribution Detail Transaction History reports
 - Documents related to employee payrate, special compensation, and benefits
 - Various other relevant documents
- ✓ Reviewed Agency payroll records and compared the records to data reported to CalPERS to determine whether the Agency correctly reported compensation.
- ✓ Reviewed payrates reported to CalPERS and reconciled the payrates to Agency public salary records to determine whether base payrates reported were accurate, pursuant to publicly available pay schedules that identify the position title, payrate and time base for each position, and duly approved by the Agency's governing body in accordance with requirements of applicable public meetings laws.
- ✓ Reviewed CalPERS reports to determine whether the payroll reporting elements were reported correctly.

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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 unlawful employment occurs.
- ✓ Reviewed the Agency's independent contractors to determine whether the individuals were either eligible or correctly excluded from CalPERS membership.
- ✓ Reviewed the Agency's affiliated entity organizational structure to determine whether employees of the affiliated entity qualified for CalPERS membership and were enrolled as required.
- ✓ Reviewed the Agency's calculation and reporting of unused sick leave balances, if contracted to provide additional service credits for unused sick leave.

CITY OF MAYWOOD

APPENDIX B

AGENCY'S WRITTEN RESPONSE

February 22, 2017

CalPERS ID: 4191618335
Job Number: P15-013

BELIZ CHAP.PUIE,
Chief Office of Audit Services

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

Dear Ms. Chap. Puie:

Enclosed is the City's response to CalPERS on your compliance review report regarding City of Maywood's contract with the California Public Employees' Retirement System.

As requested, our response addresses whether we agree with the recommendations in your report.

On a related note, CalPERS compliance report refers in several instances to a OAS report issued on April 2012. I kindly request a copy of such report.

We appreciate the time extension you and your staff have provided our staff in the completion of our response. If you have any questions, please contact me, Ofelia Mancera at (323) 562-5707.

Thank you.
Best Regards,

Ofelia Mancera,
Principal Accountant, City of Maywood

Enclosure

cc:
Reuben Martinez, Interim City Administrator

CITY OF MAYWOOD

OFFICE OF AUDIT SERVICES REVIEW RESULTS

1: The Agency did not submit payroll reports or remit retirement contributions within required timelines. In addition, the Agency was delinquent in payments dating back to January 1, 2013.

Condition:

CalPERS records show the Agency did not submit payroll reports for Fiscal Year 2011-12 and has underpaid employer contributions nearly every month from August 2013 through May 2016. In addition, the Agency is delinquent in payments to CalPERS consisting of arrears payments under Government Code Section 20283, administrative fees, 1959 survivor benefits, and employer contributions dating back to January 1, 2013. A majority of the unpaid employer contributions are for the non-payment of annual pension costs attributed to the Agency's safety retirement plan. The Agency is delinquent in payments totaling approximately \$2,897,000 composed of \$2,739,623 for outstanding arrears payments as noted below:

- \$693,557 for Fiscal Year ended June 30, 2013
- \$706,837 for Fiscal Year ended June 30, 2014
- \$781,428 for Fiscal Year ended June 30, 2015
- \$557,392 for Fiscal Year ended June 30, 2016

Government Code Section 20532 states that the contracting agency shall make the contributions for its employees as recommended by the actuary and approved by the board. CCR Sections 565 and 565.1 state that member and employer contributions shall be received by CalPERS within 15 days from the close of a pay period, and payroll reports shall be received within 30 days from the close of a pay period.

A similar finding was noted in the OAS report issued April 2012.

Recommendation:

The Agency should implement payroll procedures to ensure that retirement contributions are received at CalPERS within 15 days from the close of a pay period, and payroll reports are received within 30 days from the close of a pay period. In addition, the Agency should ensure unpaid employer contributions are remitted to CalPERS in accordance with their contract and the PERL.

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

Criteria:

Government Codes: § 20160, § 20221, § 20283, § 20532, and § 20572
CCR: § 565 and § 565.1

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City's Response:

Agree with this recommendation. The newly staffed City's accounting department, calendars and pays on time monthly retirement/health premium contributions and payroll reports to CalPERS. This new procedure has been in place since September 2016 per the City's new Principal Accountant request. The City's accounting department staff will work with CalPERS Employer Account Management Division (EAMD) to identify and make adjustments, if necessary, to any impacted active and retired member accounts as recommended by our auditors. In addition a repayment plan to cover the unpaid contributions for fiscal years 2013 to 2016 has already being approved by CalPERS and the first payments have already been made.

As a reference hereafter I include a relevant segment of the City's response provided on January 6, 2017 to the California State Audit on this regard.

CalPERS debt repayment plan:

The following proposed action plan has been approved by CalPERS.

Background

Prior City Management, for reasons unknown by current management or city council, had not remitted to CalPERS amounts due for the CalPERS Safety Retirement Plan and some other amounts due CalPERS. Current City of Maywood management has taken the amounts due CalPERS as a serious matter that needs to be resolved. Recognizing that the City needed to pay the delinquent amounts and also recognizing the inability of the City to pay the entire amount due in one year, the City initiated contact with CalPERS in order to work out a repayment plan that fully pays the debt and at the same time allows the City to continue to operate and provide needed services to the residents of Maywood. In May or June of 2016 the City had contacted the CalPERS actuary assigned to Maywood in order to negotiate a repayment plan. After that there were, over an extended period of time, conversations between the City and CalPERS staff. During those discussions the City continued to state its goal to fully repay the delinquent amounts within a framework and time period that allows the City to continue to operate.

Actions Taken / About to be Taken

1. In September of 2016 the City repaid the following debt:
 - a. Unfunded Liability (Miscellaneous) FY 15-16 - \$34,180
2. This Fiscal year CalPERS contributions have been timely paid as follows:
 - a. July-December 2016 Payroll Contributions - \$50,409
 - b. July'16- January'17 Health Premium - \$102,815
 - c. July- December 2016 - Unfunded Liability (Safety) - \$417,109
 - d. July-December'16 Unfunded Liability (Miscellaneous) - \$43,841
3. Additionally November and December of 2016 the City paid the following:
 - a. Arrears YR 13-14- \$194,758
 - b. Arrears Admin Fees for YR 13-14 - \$14,500

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Proposed Action Plan

With the steps taken and the payments previously made as of December 2016, the amounts still owed by the City are the four (4) payments of the unfunded liability for the safety plan and the negotiated accrued interest. Those amounts are as follows:

- FY 12-13 Unfunded Liability – Safety: \$693,557.00
- FY 13-14 Unfunded Liability – Safety: \$706,837.00
- FY 14-15 Unfunded Liability – Safety: \$781,428.00
- FY 15-16 Unfunded Liability – Safety: \$548,590.22
- Accrued Interest: \$ 409,561

Based on the increase in property tax levy for retirement, and the time in which those increased property taxes receipts will be received by the City, the City's repayment plan for the remaining amounts due is as follows:

Fiscal Year 2016-17

- Pay mid to late January 2017 - \$ 682,603
- Pay mid to late May 2017 – \$ 682,603

Fiscal Year 2017-18

- Pay mid to late January 2018 – \$ 682,603
- Pay mid to late May 2018 – \$ 682,603

Fiscal Year 2018-2019

- Pay mid to late January 2019- Accrued Interest of \$ 409,561

With this schedule the City will have paid all delinquent amounts due before the end of Fiscal Year 2017-18 **which is actually less than 19 months from now.**

In addition to the repayment schedule the City intends to pay all FY 2016-17 and FY 2017-18 amounts due in a timely manner.

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2: The Agency did not enroll employees into membership as required.

Condition:

The Agency did not enroll employees into membership and did not report pay rates and regular earnings. The OAS review completed April 2012 identified the Agency misclassified 13 employees as independent contractors and recommended the Agency enroll the employees into membership with an effective date of July 1, 2010. The recommendation also stated that the Agency should report the employees' compensation earnable for the period in which the compensation was earned. Agency records showed that the employees received various amounts of compensation in FY 2010-11; however, OAS was unable to determine if the compensation paid to the employees was reportable. The Agency did not provide payroll records during the current review for FY 2012-13 and 2013-14; therefore, OAS was unable to determine if the employees received reportable compensation. Additionally, the Agency provided records that showed three of the 13 employees' received settlement agreements that included compensation for services rendered. However, the Agency did not report the earnings for those employees. OAS was unable to determine whether compensation for services rendered described in the settlement agreement was reportable to CalPERS. Finding 3 discusses the necessity and requirements for providing requested information to determine the correctness of retirement benefits and reportable compensation under Government Code Sections 20221 and 20222.5.

A similar finding was noted in the OAS report issued April 2012.

Recommendation:

Agency should ensure employees are enrolled into membership and earnings are reported when required.

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

Criteria:

Government Codes: § 20028, § 20160, § 20221, § 20222.5, § 20283, § 20630, and § 20636

City's response:

The City concurs with the recommendation and will ensure all employees are enrolled into membership and earnings are reported when required. The City of Maywood has new government and administration. The recently hired Principal Accountant is committed to work along with CalPERS EAMD to identify and make adjustments, if

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necessary, to a potentially impacted employee, who is an active member at present. The City will determine the reportable amount to the settlement -if applicable. However the amount of settlement for the City of Maywood is only \$250,000 the rest is from another source.

CalPERS Code section 20630

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3: The Agency did not provide specific information deemed necessary to determine the correctness of retirement benefits and reportable compensation.

Condition:

Prior to the on-site field visit in May 2016, OAS requested pertinent information to determine whether compensation earnable was properly reported to CalPERS. In addition, during and subsequent to our on-site field visit, OAS made several requests for information. However, the Agency did not provide OAS with the following documents:

- Written labor policies including employment contracts and Memoranda of Understanding
- Employer paid member contribution (EPMC) resolution
- City Council meeting minutes
- Personnel files
- Payroll records for FY 2012-13 and 2013-2014

A similar finding was noted in the OAS report issued April 2012.

Recommendation:

The Agency must provide information that CalPERS requires in the administration of the system per Government Code Sections 20221. The Agency must also provide information requested by CalPERS during the course of a review as deemed necessary for determining the correctness of retirement benefits and reportable compensation per Government Code Section 20222.5. Failure to provide requested information could result in the termination of the Agency's contract pursuant to Government Code Section 20572.

The Agency should work with EAMD and the CalPERS Benefit Services Divisions (BNSD) to provide all supporting documentation that can be located or prepared in the future in order to determine the correctness of retirement benefits, health benefits and reportable compensation.

Criteria:

Government Codes: § 20221, § 20222.5, and § 20572

City's response:

The City concurs with the recommendation and in addition to hiring a Principal Accountant, has contracted the services of an external HR Consultant in order to ensure that information required by CalPERS is complete, accurate and in service of the specified requirements. At the time of this response, the City is prepared to provide information that CalPERS requires

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in the administration of the system per Government Code Sections 20221

As a result of changes made with the input of the external HR Consultant, the City is prepared to provide information requested by CalPERS during the course of a review as deemed necessary for determining the correctness of retirement benefits and reportable compensation per Government Code Section 20222.5

And, the City will be prepared to work with EAMD and the CalPERS Benefit Services Divisions (BNSD) to provide all supporting documentation that can be located or prepared in the future in order to determine the correctness of retirement benefits, health benefits and reportable compensation.

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4: The Agency did not have a pay schedule that met all of the Government Code and CCR requirements.

Condition:

The Agency did not have a pay schedule that met all of the Government Code and CCR requirements. The schedule provided was contained in the Agency's Annual Operating Budget for Fiscal Years 2014-15 and 2015-16. Although the budget was adopted by the Agency's governing body, the pay schedule did not identify payrates for all positions. In addition, the schedule did not include an effective date, and the annual salaries for elected officials included non-reportable compensation, specifically a cell phone stipend. As a result, the schedule did not meet the requirements of Government Code Section 20636 and CCR Section 570.5.

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

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

Pay amounts reported for positions that do not comply with the payrate definition and pay schedule requirements cannot be used to calculate retirement benefits because the amounts do not meet the definition of payrate under Government Code Section 20636(b)(1). When an employer does not meet the requirements for a publicly available pay schedule, CalPERS, in its sole discretion, may determine an amount that will be considered to be payrate as detailed in CCR Section 570.5.

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A similar finding was noted in the OAS report issued April 2012.

Recommendation:

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

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

Criteria:

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

City's response:

We concur with this recommendation. The City's new administration is able, willing and ready to work with EAMD to identify and make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section § 20160

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5: The Agency did not report special compensation in accordance with the Government Code and CCR.

Condition:

- A. The Agency did not report the monetary value of uniforms provided to a Code Enforcement Officer. The monetary value of uniforms is a statutory item and should be reported to CalPERS as special compensation for classic CalPERS members as required by Government Code 20636(c) (6) and CCR Section 571.

A similar finding was noted in the OAS report issued April 2012.

- B. The Agency did not include the conditions for payment of the uniforms discussed above in a written labor policy. Specifically, the Agency did not have a written labor policy that identified the amount of special compensation as required by Government Code Section 20636 and CCR Section 571(b).

Reportable special compensation is defined in Government Code Section 20636 and CCR Section 571(a), and must be reported if it conforms with all of the requirements listed in CCR Section 571(b). Specifically, special compensation is required to be contained in a written labor policy or agreement indicating the eligibility and amount of special compensation. Also, special compensation must be available to all members in the group or class, part of normally required duties, performed during normal hours of employment, paid periodically as earned, and historically consistent with prior payments for the job classification.

Recommendation:

The Agency should ensure the monetary value of uniforms is reported as special compensation.

The Agency should identify the conditions for payment of special compensation in a written labor agreement.

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

Criteria:

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

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City's response:

With the support of the contracted external HR Consultant, the City is making the appropriate changes to current written labor policy and agreement to ensure that when special compensation is required to be contained in the written labor policy and/or agreement, it indicates the eligibility and amount of special compensation available to all members in the group or class.

Specifically, the City is ensuring the monetary value of uniforms is reported as special compensation.

In addition, the City is ready, willing and able to work with EAMD to identify and make adjustments, as necessary to any impacted active and retired member accounts pursuant to Government Code Section 20160

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6: The Agency incorrectly reported pay rates and earnings.

Condition:

- A. The Agency incorrectly reported payrate and regular earnings for the City Manager for the pay periods ended on December 12, 2015 through April 16, 2016. The City Manager was placed on administrative leave December 10, 2015 due to a pending termination, and the termination occurred on April 25, 2016. Although the City Manager did not work during this period, the Agency continued to report the City Manager's payrate and earnings of \$15,000 per month through the pay period ended April 16, 2016. Government Code Section 20630 defines compensation as payment for an employee's services performed during normal working hours, or for time during which the employee is excused from work. Compensation for a paid absence in anticipation of a termination is not reportable as regular earnings.

A similar finding was noted in the OAS report issued April 2012.

- B. The Agency did not report payrate and earnings for a Council Member and Code Compliance Officer II in the pay period ended May 30, 2015. In addition, the Agency hired a City Manager on April 13, 2016 to succeed the City Manager discussed in Finding 6A. However, the Agency did not report payrate and earnings for the new City Manager between April 13, 2016 and April 30, 2016. Subsequent to the OAS auditor's on-site fieldwork, the Agency began reporting payrate and earnings for the new City Manager effective May 1, 2016.
- C. The Agency incorrectly reported a Council Member's monthly payrate as hourly. The payrate for the pay periods ended February 22, 2014 and May 30, 2015 was \$556 per month. However, the Agency reported \$556.00 per hour in both pay periods.

Recommendation:

The Agency should ensure pay rates and earnings are correctly reported.

The Agency should ensure only reportable compensation is reported.

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

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Criteria:

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

City's response:

The City concurs with the recommendation, recently hired qualified individuals committed to make the necessary changes in procedure to ensure that earnings are correctly and timely reported.

Regarding finding six A-The City is in the process of investigating and determining the work situation – i.e. working normal hours vs paid absence in anticipation of termination- of the City Manager during the pay period that ended April 16, 2016. As soon as that determination is complete, the City will adjust and ensure as appropriate that payrates and earnings are correctly reported; ensuring only reportable compensation is reported for City Manager for the pay periods ended on Dec. 12 2015 through April 16, 2016.

Regarding finding Six B- We concur with the finding, we will review and ensure that adjustment is made –if applicable- to reflect any omitted pay period.

Six C- Has already been corrected

The City is ready, willing and able to work with EAMD to identify and make adjustments, as necessary to any impacted active and retired member accounts pursuant to Government Code Section 20160

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7: The Agency incorrectly enrolled elected officials into membership.

Condition:

- A. The Agency incorrectly enrolled an elected official as an optional member. Specifically, the City Clerk is an elected position and was enrolled by the Agency as an optional member; however, the elected official did not file an election in writing with CalPERS to become a member. Government Code Section 20322 states that an elective officer is excluded from membership in the CalPERS retirement system unless the officer files an election in writing with CalPERS to become a member.
- B. The Agency did not enroll an elected official as an optional CalPERS member. The Agency provided a completed Optional Membership Form (AESD-59) indicating the elected official opted to become a CalPERS member. However, the Agency enrolled the elected official as a regular member instead of an optional member.

Recommendation:

The Agency should not enroll elected officials into CalPERS membership unless the officer files an election in writing with CalPERS to become a member. In addition, the Agency should ensure reelected officials are identified as optional members when the officials are enrolled into membership.

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

Criteria:

Government Codes: § 20160 and § 20322

City's response:

The City concurs with the recommendation. City staff is making the appropriate corrections in procedure ensuring not to enroll elected officials into CalPERS membership unless the officer files an election in writing with CalPERS to become a member.

In addition, the City is ensuring that elected officials are identified as optional members when the officials are enrolled into membership.

City will work with EAMD to identify and make adjustments, as necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20160.

Regarding finding 7B- The agency has corrected the impacted elected officials from a regular to an optional member.

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8: The Agency incorrectly paid and reported member contributions for PEPRA members.

Condition:

The Agency incorrectly paid and reported the member contributions for its PEPRA employees. Specifically, the Agency paid the member contributions on behalf of the employees and reported the contributions as employer paid member contributions. The Public Employee's Pension Reform Act (PEPRA) of 2013 requires employees hired after January 1, 2013 to pay their own contributions.

Recommendation:

The Agency should stop paying the member contributions for PEPRA members and report the contributions to CalPERS as member paid.

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

Criteria:

Government Codes: § 20120, § 20121, § 20160, § 7522.04, and § 7522.30

City's response:

The City Administrator and Principal Accountant are in the process of reviewing the specifics of previously approved MOU's and contractual agreements in place that may prevent the City from fully complying with this recommendation. The City will respond with appropriate recommendations as they see fit and will work closely with EAMD to identify and make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section § 20160.

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9: The Agency misclassified an employee as an independent contractor and did not enroll the employee when eligible.

Condition:

The Agency misclassified an employee as an independent contractor and did not enroll the employee into CalPERS membership upon meeting eligibility requirements. Specifically, the Agency hired the employee under a personal services agreement as a Contract Project Manager on September 27, 2010 and did not consider the individual to be an employee. However, based on the review of documents provided by the Agency and using a common law test, OAS concluded the individual was an Agency employee. More specifically, the Project Manager worked under the direction of the City Manager, operated under the Agency's name, and was required to attend meetings. The Project Manager was also provided with office space, office equipment, and email. Additionally, the Project Manager was required to work hours set by the City Manager and was personally required to do the work.

OAS reviewed the number of hours the employee worked from July 1, 2014 through May 31, 2015, and found the employee worked 1,980.50 hours. As a result, the employee qualified for membership after reaching 1,000 hours worked per Government Code Section 20305.

For the purposes of the PERL 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 Dec. 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 employee is the right of the principal to control the manner and means of job performance and the desired result and 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.

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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 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.

A similar finding was noted in the OAS report Issued April 2012.

Recommendation:

The Agency should review the number of hours worked by the employee subsequent to their hire on September 27, 2010, and enroll the employee into membership no later than the first day of the first pay period of the following month after the employee reached 1,000 hours worked in a fiscal year. The Agency should report the employees' compensation earnable for the period in which the compensation was earned, and the Agency should submit retirement contributions on behalf of the employee. If EAMD determines the Agency knew or should have known of the individuals' eligibility, the Agency is required to pay all arrears costs for member contributions and administrative costs of five hundred dollars (\$500) pursuant to section 20283.

In addition, the Agency should ensure all employees are properly classified and enroll the employees once they meet CalPERS eligibility.

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

Criteria:

Government Codes: § 20160, § 20305, § 20630, and § 20636

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City's response:

As per information provided by the former City accounting supervisor, and gathered by the Interim City Administrator, the aforementioned eligibly employee, was in fact an independent contractor until the end of fiscal year 2013-2014. With respect to fiscal year 2014-2015 and year 2015-2016, the City will review the information on file and will work with EAMD to identify and make adjustments, if necessary, to this and any other impacted active and retired member accounts pursuant to Government Code Section 20160.

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10: The Agency did not report retired annuitant information as required.

Condition:

The Agency did not report the payrate, hours worked, and earnings paid for two retired annuitants in my CalPERS to allow monitoring of the 960-hour limit per fiscal year. The Agency hired the retired annuitants as independent contractors. However, as described in Finding 9, OAS uses a common law test to determine whether an individual is an independent contractor or an employee. By applying the common law test, OAS found the individuals to be employees of the Agency and were therefore subject to retired annuitant laws. One of the retired annuitants was hired as an Acting Accounting Supervisor. The Acting Accounting Supervisor worked under the direction of the City Manager, was personally required to perform the work, and the work was performed on the Agency premises. The work was formerly performed by an Agency employee and the employee did not perform the same services to the general public. The Acting Accounting Supervisor was also provided with office space, office equipment and was paid hourly by the Agency.

The second retired annuitant was hired as an Accountant. The Agency had the right to control how the work was performed and the work was directed, supervised and reviewed by an Agency employee. The Accountant was provided instruction on the manner or means of accomplishing the desired results by an Agency employee, the work hours were approved by the Accounting Supervisor, and the Agency had first call on the Accountant's time or services. The Accountant was also provided with office space, office equipment and was paid hourly by the Agency. Although the retired annuitants did not exceed 960 hours worked in the fiscal year tested, the Agency did not report the hours and compensation of the retired annuitants in my CalPERS as required.

Recommendation:

The Agency should report the retired annuitants' information in my CalPERS.

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

Criteria:

Government Codes:§ 20120, § 20121, § 20122, and§ 20160

City's response:

The City concurs with the finding with regards to reporting retired annuitants' payrate, hours worked and earnings information in my/Calpers. Due to non-existence of

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Human Resource staff knowledgeable as to reporting requirement associated with annuitants working for the City, the process was inadvertently not complied.

The City will work with EAMD to make adjustments to retired member accounts pursuant to Government Code Section 20160.

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11: The Agency did not maintain the required member reciprocal self-certification.

Condition:

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

Recommendation:

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

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

Criteria:

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

City's response:

At the time of this response, the City is making the appropriate corrections in procedure ensuring employees hired on or after January 1 2013 have certified in writing whether they are members of another public retirement system and provide the additional required information if reciprocity exists. And the Agency is retaining the information provided.

The City is able, ready and willing to work with EAMD to identify and make adjustments, if necessary, to any impacted active member accounts pursuant to Government Code Section § 20160.