

Office of Audit Services



CalPERS

Public Agency Review

City of Waterford

CalPERS ID: 5455336444
Job Number: P14-011

March 2015



California Public Employees' Retirement System
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March 27, 2015

CalPERS ID: 5455336444
Job Number: P14-011

Lori Martin, City Clerk
City of Waterford
101 E Street
PO Box 199
Waterford, CA 95386

Dear Ms. Martin:

Enclosed is our final report on the results of the public agency review completed for the City of Waterford (Agency). Your written response is included as an appendix to the report. Please note that we reviewed the information you provided and have added a clarification to Finding 5. 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 Young Hamilton

YOUNG HAMILTON, Acting Chief
Office of Audit Services

Enclosure

cc: Council Members, City of Waterford
Risk and Audit Committee Members, CalPERS
Matthew G. Jacobs, General Counsel, CalPERS
Diane Alsup, Interim Chief, BNSD, CalPERS
Anthony Suine, Interim Chief, CASD, CalPERS
Renee Ostrander, Chief, EAMD, CalPERS

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RESULTS IN BRIEF

The primary objective of our review was to determine whether the City of Waterford (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.

- The pay schedule did not meet all the Government Code and CCR requirements.
- Reported payrates exceeded amounts listed in the public pay schedule.
- Value of uniforms provided was not reported to CalPERS.
- Elected officials were not offered optional membership.
- Retired annuitant was unlawfully employed.

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 March 1, 1971 to provide retirement benefits for local miscellaneous and local safety (police) 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, 2011 through June 30, 2014. OAS selected one employee subject to the Public Employees' Pension Reform Act of 2013 (PEPRA). 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: The Agency's pay schedule did not meet all the Government Code and CCR requirements.

Condition:

The Agency's 2013-14 pay schedule did not identify the position titles for every employee position. Specifically, the pay schedule did not include the Accounting Tech I/II and City Council Member positions in the pay schedule. Further, the pay schedule did not indicate an effective date.

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 pay rate 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 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 its pay schedule meets all Government Code and CCR requirements.

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

Criteria:

Government Codes: § 20160, § 20636

CCR: § 570.5

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2: Reported payrates exceeded the amounts listed in the public pay schedule.

Condition:

The Agency reported payrates that exceeded the maximum payrates listed in the Agency's published pay schedule. OAS found that the Agency approved pay increases for four employees that were not reflected on the pay schedule. Specifically, the Agency reported a monthly payrate of \$8,005.60 for the City Clerk; however, the maximum monthly salary listed in the pay schedule was \$7,833.26. The Agency also reported a monthly payrate of \$11,071.66 for the City Administrator; however, the salary listed in the pay schedule was \$10,333.33. In addition, the Agency reported a monthly payrate of \$9,003.41 for the Public Works Director while the maximum salary listed in the pay schedule was \$8,809.60. Lastly, the Agency reported an hourly payrate of \$57.00 for the part-time Finance Manager, but the pay schedule listed an hourly payrate of \$45.00.

Payrate is an important factor in computing a member's retirement allowance because service credit and final compensation are directly related to the payrate and earnings reported for a member.

Recommendation:

The Agency should ensure employee payrates reported to CalPERS are correct and contained within a publicly available pay schedule that meets all CCR requirements.

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

Criteria:

Government Code § 20160, § 20636(b)(1)
CCR: § 570.5

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3: The monetary value of uniforms was not reported to CalPERS.

Condition:

- A. The Agency did not report the monetary value for the purchase and maintenance of uniforms provided to public works employees who are required to wear uniforms. CCR Section 571 requires the monetary value for the purchase, rental, and /or maintenance of required clothing, a statutory item, be reported as special compensation.
- B. The Agency's written labor agreement did not include uniform provisions that indicated the conditions for payment, including, but not limited to, eligibility for and amount of the special compensation as required by CCR Section 571.

Recommendation:

The Agency should report the monetary value of uniforms and maintenance of uniforms as special compensation for classic CalPERS members. In addition, the conditions for payment of uniforms and uniform maintenance must be included in a written labor policy or agreement.

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

Criteria:

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

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4: The Agency did not offer optional membership to its council members.

Condition:

The Agency did not advise its council members of their optional CalPERS membership rights. 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. Optional members must be advised of their optional CalPERS membership rights when first become eligible for membership. An elective officer includes persons elected to a City Council.

Recommendation:

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

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

Criteria:

Government Codes: § 20160, § 20322

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5: The Agency unlawfully employed a retired annuitant.

Condition:

A retired annuitant was unlawfully employed due to the annuitant's employment in a permanent position during the review period, July 1, 2011 through June 30, 2014. Specifically, the annuitant worked on a part-time basis as the Wastewater Treatment Plant Chief Operator. Through the review of the job duty statement, employee roster and pay schedule, OAS verified that the position was a permanent Agency position. Government Code Section 21221(h), in effect as of July 1, 2011, explained that appointments made under this section were limited to a total of 12 months. Government Code 21221(h) was revised effective January 1, 2012 and explained that that a retired annuitant cannot be hired into a vacant permanent or regular staff position except as an interim appointment during the recruitment to fill the vacant position.

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 ensure retired annuitants are not hired to work in a vacant position unless the appointment is on an interim basis.

The Agency should work with the Benefit Services Division to determine the appropriate course of action.

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Criteria:

Government Codes: § 20160, § 21202, § 21220, § 21221, § 7522.56

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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. 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, of California Code of Regulations.

Respectfully submitted,

Original Signed By Young Hamilton

YOUNG HAMILTON, CPA, CIA, CISA
Acting Chief, Office of Audit Services

Staff: Cheryl Dietz, CPA, Assistant Division Chief
Alan Feblowitz, CFE, Senior Manager
Dennis Szeto, 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 meetings laws.
- ✓ Reviewed CalPERS listing 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 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



Phone 209.874.2328

101 "E" Street
P.O. Box 199
Waterford, CA 95386

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Michael Van Winkle
Mayor

Jose Aldaco
Vice-Mayor

Ken Krause
Council Member

Joshua Whitfield
Council Member

John Gothan
Council Member

March 9, 2015

Mr. Young Hamilton, Acting Chief
California Public Employee's Retirement System
Office of Audit Services
PO Box 942701
Sacramento, CA 94229-2701

RE: CalPERS ID: 5455336444
Job # P14-011

Dear Mr. Hamilton:

This letter is to acknowledge receipt and to provide a written response to the draft compliance review, dated February 26, 2015 regarding the City of Waterford's contract with the California Public Employee's Retirement System.

The City of Waterford acknowledges the professionalism of Dennis Szeto in conducting this audit and believes that City staff provided a high level of professionalism along with very timely production of records to assist Mr. Szeto in completing the audit.

The City of Waterford offers the following responses to the draft compliance review report:

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

City's Response: The Agency's pay schedule has been available in the office of the City Clerk and available to the public during normal office hours, and includes all current positions and pay rates and is duly adopted in the city's annual fiscal year budget that is available online. The city has updated the pay schedule and it is now posted separately to the city's website and the schedule meets all of the requirements pursuant to CCR Section 570.5, Government Code Section 20636, et.al.

Finding 2: Reported pay rates exceeded the amounts listed in the public pay schedule.

City's Response: The salary schedule posted to the city's website did not include recent COLA increases applied to the four identified employees approved by the City Council. Personnel files reflect properly signed and approved personnel action forms which identify the correct salary compared to the master salary schedule kept on file in the office of the city clerk and available to the public during normal office hours. In addition, the City Manager has an employment agreement adopted by City Council that identifies his salary and/or rate of pay including the annual COLA adjustments. The city will continue to ensure employee pay rates reported to CalPERS are correct.

The city will also ensure that employee pay rates are contained within a publicly available pay schedule and will ensure its pay schedule posted to the city website meets all Government Code and CCR requirements. The city does not believe that any adjustments to active or retired member accounts pursuant to Government Code Section 20160 are needed.

Finding 3: The monetary value of uniforms was not reported to CalPERS.

City's Response: The city has acted consistent with its MOU. The city will reopen negotiations on its MOU to address this finding. The monetary value of uniforms provided by the city to the public works employees once renegotiated will be reported to CalPERS and the city's written labor agreement once renegotiated will be amended to address conditions and eligibility for uniform provisions as required by CCR Section 571.

Finding 4: The Agency did not offer optional membership to its council members.

City's Response: City staff members had the understanding that elected officers were excluded from membership in the CalPERS retirement system based on the city's contract with CalPERS not including elected officers; therefore that assumption was never questioned as the city believed that a contract amendment was required to include elected officials. The city subsequently advised all the current elected officers on March 5, 2015, and future candidates and elected officials will be advised of their optional CalPERS membership rights by the inclusion of PERS notices in their candidate and elected official handbooks. In addition, the city will work with CASD to make adjustments, if any, to active and retired member accounts pursuant to Government Code Section 20160.

Finding 5: The Agency unlawfully employed a retired annuitant.

City's Response: The individual in question has worked on an on-call and limited part-time basis since 1996 to provide expertise and oversight of the city's waste water treatment plant. Over the last several years, the city has experienced declining revenues and increasing costs and this has been the most economical way the city could obtain the level of expertise it needed for operational and maintenance oversight of its waste water treatment plant.

Since 2008 the Public Works Department has been working diligently at training and certifying one of its full time employees. Since the full time employee obtained the proper certification to run the waste water treatment plant, the retired annuitant's hours were continually reduced as the full time employee gained experience. The city always ensured that the retired annuitant never worked more than the 960 hours annually and since the full time employee's certification in 2008, the retired annuitant's hours have been continually reduced and has only been working 4 hours per week.

The City of Waterford operates with a full time staff of 13 employees and serves a population of approximately 8,500. Pursuant to information found on the State Controller's website, the City of Waterford had the fewest employees per capita compared with three nearby counties. It is not feasible for a city the size of Waterford that has limited resources to staff a full time fully certified waste water treatment operator, therefore the city found that by utilizing the expertise of a fully certified retired annuitant on a limited part-time basis was the best way to accomplish this need as economical as possible. Small municipalities like Waterford find it difficult to conform to the same laws that are geared more for large municipalities like Sacramento, San Jose, Los Angeles, etc.

Once, the city has been made aware of this finding the city has terminated employment of the retired annuitant as of March 9, 2015, and will explore alternatives to obtain on-call services of a certified operator to fill in during absences of the city's one full time certified employee that operates the waste water treatment facility.

After researching this issue, the city understands that the law pertaining to employment of a retired annuitant became effective on January 1, 2013. The city's understanding prior to January 1, 2013 was that there was no requirement to reinstate a retired annuitant as long as the retired annuitant did not exceed 960 hours in a fiscal year. Now that the city has been made aware of the new requirements outlined in California Government Code Section 7522.56, et. al, which became effective January 1, 2013 the city will ensure retired annuitants are not hired to work in a vacant position unless the appointment is on an interim basis. Furthermore, the city will work with the Benefit Services Division to determine the appropriate course of action. In addition, with respect to this retired annuitant, the error was inadvertent and we respectfully request that no further action be taken with respect to this finding given that the retired annuitant is no longer working for the City.

In closing, the City of Waterford appreciates CalPERS' diligence in upholding regulations and in bringing these matters to the City's attention. We also ask that CalPERS evaluate how it communicates changes and requirements to contract agencies in the future.

Please contact the undersigned at (209) 874-2328 ext. 109 should you have any questions regarding any of the above responses by the City of Waterford.

Sincerely,



Lori Martin, MMC
City Clerk

Original Signed By Lori Martin

Cc: Tim Ogden, City Manager
Corbett Browning, City Attorney