



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

July 25, 2011

Employer Code: 1545
Job Number: P10-034

City of Hercules
Elizabeth D. Warmerdam, Finance Director
111 Civic Drive
Hercules, CA 94547

Dear Ms. Warmerdam:

Enclosed is our final report on the results of the public agency review completed for the City of Hercules. Your agency's written response indicates agreement with the issues noted in the report. The written response is included as an appendix to the report. As part of our resolution process, we have referred the issues identified in the report to the appropriate divisions at CalPERS. Please work with these divisions to address the recommendations specified in our report. It was our pleasure to work with your agency and we appreciate the time and assistance of you and your staff during this review.

Sincerely,

Original Signed by Margaret Junker
MARGARET JUNKER, Chief
Office of Audit Services

Enclosure

cc: Finance Committee Members, CalPERS
Peter Mixon, General Counsel, CalPERS
Darryl Watson, Chief, CASD, CalPERS
Mary Lynn Fisher, Chief, BNSD, CalPERS
Don Martinez, Interim Assistant Chief, HAS, CalPERS
Honorable Board Members, City of Hercules

Office of Audit Services



Public Agency Review City of Hercules

Employer Code: 1545
Job Number: P10-034

July 2011

CITY OF HERCULES

TABLE OF CONTENTS

<u>SUBJECT</u>	<u>PAGE</u>
Results in Brief.....	1
City Background.....	1
Scope.....	2
Office of Audit Services Review Results	3
Finding 1: Non-Reportable Compensation Reported	3
Finding 2: Compensation Earnable Not Reported.....	5
Finding 3: Publicly Available Salary Information.....	6
Finding 4 Payroll Reporting Elements	7
Finding 5: Temporary/Part-time Employees	8
Finding 6: Independent Contractor.....	9
Finding 7: Certification of Unused Sick Leave.....	10
Finding 8: Health Benefit Eligibility	11
Conclusion	12
CalPERS Background.....	Appendix A
Objectives	Appendix B
Criteria	Appendix C
City's Written Response	Appendix D

CITY OF HERCULES

RESULTS IN BRIEF

The Office of Audit Services (OAS) reviewed the City of Hercules' (City) enrolled individuals, member compensation, required health and retirement documentation and other documentation for individuals included in test samples. A detail of the findings is noted in the Results section beginning on page three of this report. Specifically, the following findings were noted during the review:

- Non-reportable compensation was reported to CalPERS.
- Compensation earnable was not reported to CalPERS.
- Payrates were not reported in accordance with publicly available salary information.
- Payroll information was incorrectly reported to CalPERS.
- Temporary/part-time employees were not enrolled into CalPERS membership when eligible.
- An employee was misclassified as an independent contractor and not enrolled into CalPERS membership.
- An incorrect amount of unused sick leave was certified to CalPERS.
- Eligibility verification for dependents enrolled in CalPERS Health Benefits Program was not provided.

The pertinent sections of the Government Code and California Code of Regulations for each finding are described in greater detail under Appendix C.

A confidential list identifying the individuals mentioned in this report has been sent to the City and CalPERS Customer Account Services Division (CASD), Benefit Services Division, and Health Account Services (HAS) as an appendix to the draft report.

CITY BACKGROUND

The City is a general law city and has operated under the Council-Manager form of municipal government since its incorporation on December 15, 1900. Five members, elected at large to four-year overlapping terms, comprise the City Council. The City Council selects the Mayor from among the City Council members. The City Manager is appointed by and serves at the pleasure of the City Council. The City Manager's responsibilities include implementing City Council policy decisions and supervising all City government operations. The City provides municipal services including police protection, electric and sewer utilities, street maintenance, parks and recreations, child day care, senior services, planning, building and safety, and other general government functions. Memoranda of Understanding (MOU) and employment agreements outline all

CITY OF HERCULES

City employees' salaries and benefits and state the terms of employment agreed upon between the City and its employees.

The City contracted with CalPERS effective July 1, 1991, to provide retirement benefits for local miscellaneous and police employees. The City's current contract amendment identifies the length of the final compensation period as three years for local miscellaneous employees and twelve months for local safety employees. The City contracted with CalPERS effective January 1, 1995, to provide health benefits to all eligible employees.

SCOPE

As part of the Board approved plan for fiscal year 2010/2011, OAS reviewed the City's payroll reporting and member enrollment processes as these processes relate to the City's retirement and health contracts with CalPERS. The review period was limited to the examination of sampled records and processes from January 1, 2008 through December 31, 2010. The on-site fieldwork for this review was conducted on February 14, 2011 through February 18, 2011. The review objectives and a summary of the procedures performed, sample sizes, sample periods and findings are listed under Appendix B.

CITY OF HERCULES

OFFICE OF AUDIT SERVICES REVIEW RESULTS

Finding 1: The City reported non-reportable compensation to CalPERS.

Educational incentive pay, the value of employer-paid member contributions (EPMC), temporary upgrade pay, meeting pay and incentive pay did not comply with the standards of reportable special compensation.

Recommendations:

The City should only report items of special compensation as defined in California Code of Regulations Section 571.

The City should work with CalPERS CASD to assess the impact of this incorrect reporting and determine what adjustments are needed.

Conditions:

Educational Incentive Pay

In 2004, the City hired an employee as a police trainee and promoted him six months later into a sworn police officer position. The City's MOUs, from 2004 to present, provided for educational incentive pay at \$175 per month for sworn personnel who possess a Bachelor's Degree, which the police officer possessed. The City had overlooked the special compensation allowable to the member and did not pay and report the special compensation until 2009. In the 09/09-4 service period, the City applied a retroactive payment in the amount of \$17,675.00 for the missed educational incentive pay. However, the City included the six months that the member was not a sworn employee and not eligible for the special pay, which equated to an over-reporting of \$1,006.25.

Value of EPMC

The retroactive payment for the missed educational incentive pay discussed above created an over-reporting for the value of EPMC. When the City applied the retroactive payment, the payment included the value of EPMC for the entire retroactive period, which began in 2004. However, the City's resolution for

CITY OF HERCULES

reporting the value of EPMC did not become effective until June 30, 2006. Therefore, the value of EPMC was overstated by \$992.25.

Temporary Upgrade Pay

The City reported \$2,202.13 as “out of class pay” (defined as temporary upgrade pay in California Code of Regulations Section 571) for one employee in service period 10/10-4. The employee worked in a position classified as a Recreation Program Manager. The temporary upgrade pay was for temporarily performing additional duties as a Recreation Supervisor, which was a lower classification. In order for temporary upgrade pay to be reportable to CalPERS as special compensation, an employee must work in a classification which is at a higher classification than their own. Since the Recreation Supervisor position was not a higher classification, the compensation did not meet the definition of special compensation and was not reportable to CalPERS.

Meeting Pay

In the 10/10-4 service period, the City erroneously reported meeting pay for two City Council members. The City pays City Council members \$30 for each Redevelopment Agency meeting attended. In the service period tested, one City Council member received \$120 and a second received \$60 for attending Redevelopment Agency meetings. However, this meeting pay is not included on the exclusive list of reportable special compensation items and, as such, was not reportable to CalPERS.

Incentive Pay

The City’s MOUs include language for incentive pay. OAS inquired about the application of incentive pay and identified that the City was erroneously reporting compensation that did not meet the definition of special compensation. For example, we obtained documentation for one employee who received a five percent incentive pay bonus, in the amount of \$67.33, for an excellent performance review. The incentive pay, as applied in this scenario, did not meet the definition of special compensation because there was no plan in place to measure performance goals and objectives.

Criteria:

Government Code: § 20636(a), § 20636(c)(1), § 20636(c)(2)

California Code of Regulations: § 571(a), § 571(a)(1), § 571(a)(2), § 571(a)(3)

CITY OF HERCULES

Finding 2: *The City did not report all compensation earnable to CalPERS.*

Reportable compensation for the value of uniforms and statutory holiday pay was not reported for eligible employees.

Recommendations:

The City should ensure the value of uniforms provided and maintained, and statutory holiday pay for all eligible employees is reported as special compensation to CalPERS.

The City should work with CalPERS CASD to assess the impact of this non-reporting issue and determine what adjustments are needed.

Conditions:

Value of Uniforms Provided and Maintained

In accordance with the City's MOUs, the City provides uniforms and maintenance of the uniforms to certain eligible employees, such as maintenance workers. OAS obtained copies of invoices for the maintenance of the uniforms provided for one sampled employee. OAS verified the value of uniforms provided and maintained was not reported to CalPERS as special compensation as required.

Statutory Holiday Pay

Statutory holiday pay is compensation paid to employees who are required to work on an approved holiday because they work in positions that require scheduled staffing without regard to holidays. OAS identified one sampled employee who worked in such a position and traced the employee's hours worked on an approved holiday to the compensation paid for the hours worked. OAS identified that the City did not report the statutory holiday pay as required.

Criteria:

Government Code: § 20636(c)(1), § 20636(c)(2), § 20636(c)(6)

California Code of Regulations: § 571(a)(5)

CITY OF HERCULES

Finding 3: *The City did not report payrates in accordance with publicly available salary information.*

Recommendations:

The City should ensure payrates reported to CalPERS are in accordance with publicly available salary information.

The City should work with CalPERS CASD to assess the impact of this incorrect reporting and determine what adjustments are needed.

Condition:

Payrates were over-reported in service period 10/10-4 for two sampled employees who were City Council members. In July 2009, the City passed an ordinance increasing City Council members' base pay from \$792.00 to \$831.60. In the 10/10-4 service period, OAS identified that the City incorrectly reported base payrates of \$912 and \$852 for two City Council members rather than \$831.60.

Criteria:

Government Code: § 20636(b)(1)

CITY OF HERCULES

Finding 4: *The City incorrectly reported payroll information for service period, payrate and member earnings.*

Recommendations:

The City should ensure that payroll information is accurately reported and that retroactive payments are properly applied.

The City should work with CalPERS CASD to assess the impact of this incorrect reporting and determine what adjustments, if any, are needed.

Condition:

The City incorrectly reported payroll reporting elements when applying a retroactive payment for one sampled employee. As noted in Finding 1, the City paid a lump sum educational incentive and EPMC payment in 2009, retroactive back to 2004; however, the correct application was to report each fiscal year separately, including separate line items for educational incentive pay and value of EPMC, where applicable. The incorrect payroll reporting data elements included the service period, which should have been reported separately by fiscal year and the member payrate and earnings, which also should have been reported separately by fiscal year.

Criteria:

Government Code: § 20636

CITY OF HERCULES

Finding 5: *The City did not enroll temporary/part-time employees into CalPERS membership when eligibility requirements were met.*

Recommendations:

The City should immediately enroll temporary/part-time employees hired into a position that requires regular, part-time service for one year or longer for at least an average of 20 hours a week.

The City should also enroll temporary/part-time employees who reach 1,000 hours worked in a fiscal year.

The City should work with CalPERS CASD to assess the impact of these membership enrollment issues and determine what adjustments are needed.

Conditions:

The City hired employees to work in positions that were regular part-time and seasonal. OAS reviewed personnel documentation for a sample of part-time employees to determine whether employees were enrolled into CalPERS membership when eligible.

- Regular part-time employees hired to work in positions for one year or longer for service that is equivalent to 20 hours a week are eligible for CalPERS membership upon hire. OAS identified an employee appointed to a regular part-time position at 30 hours per week on June 15, 2009, making the individual eligible for CalPERS membership on that date. However, the City did not enroll this employee until January 25, 2010.
- Temporary/part-time employees are eligible for CalPERS membership when they reach 1,000 hours worked in a fiscal year. OAS identified an employee hired into a temporary/part-time position. OAS obtained time sheets from the City and verified that the employee reached 1,000 hours in June 2010 and should have been enrolled in July 2010. The employee worked a total of 1,105.50 hours in the 2009/2010 fiscal year. The City did not enroll the employee into CalPERS membership.

Criteria:

Government Code: § 20305(a)

CITY OF HERCULES

Finding 6: *The City misclassified an individual who worked in an employer/employee relationship as an independent contractor.*

Recommendations:

The City should ensure independent contractors are properly classified and not working in an employer/employee relationship. The City should also ensure employees are enrolled into CalPERS membership when eligible.

The City should work with CalPERS CASD to assess the impact of this membership enrollment issue and determine what adjustments are needed.

Condition:

OAS reviewed service contracts for a sample of independent contractors working for the City to identify employees that might have been misclassified as independent contractors.

OAS requested the City to complete an employee/employer questionnaire regarding the relationship between one individual employed as an independent contractor. OAS determined the individual was working in an employer/employee relationship dating back to the initial contract date of April 24, 2006, and was misclassified as an independent contractor. The employee continued to work for the City in the capacity of an independent contractor until hired by the City into a permanent position on November 1, 2010, at which time the City enrolled the employee into CalPERS membership. The employee should have been enrolled as of the initial contract date of April 24, 2006.

Criteria:

Government Code: § 20300

CITY OF HERCULES

Finding 7: *The City certified an incorrect amount of unused sick leave to CalPERS.*

Recommendations:

The City should ensure the correct amount of unused sick leave is certified so that a retiree receives the appropriate amount of service credit upon retirement.

The City should work with CalPERS BNSD to assess the impact of this incorrect reporting and determine what adjustments are needed.

Condition:

Retiring members are eligible for additional service credit for unused sick leave. The total number of unused sick leave hours at retirement is converted to days to determine additional service credit. The City is required to certify the additional days to CalPERS. OAS traced unused sick leave balances for a sample of employees and identified that the City certified an incorrect number of sick leave days for one retiree. At retirement, the individual had 129.26 hours of unused sick leave which equated to 16.158 days of additional service credit. The City erroneously certified 129.26 days of additional service credit, an over-reporting of 113.10 days.

Criteria:

Government Code: § 20965

CITY OF HERCULES

Finding 8: *The City did not provide verification of dependent eligibility for six dependent children enrolled under three members' health plans.*

Recommendation:

The City must ensure that the proper member and dependent enrollment documentation is on file at the City within 60 days from the date of OAS's final report. Please send an email to: *HBB_Audit_Services@calpers.ca.gov* once the requested documentation is on file. The CalPERS HAS may be contacted at (916) 795-3836 with any questions.

Condition:

OAS reviewed a sample of employees to assess the health benefits eligibility and enrollment of members and their dependents. OAS verified that the sampled employees were properly enrolled into health membership with the exception of six dependent children. The City was unable to provide documentation to support the verification of dependent eligibility for the six dependent children enrolled under three members' health plans.

Criteria:

Government Code: § 20085

California Code of Regulations: § 599.500

CITY OF HERCULES

CONCLUSION

OAS limited this review to the areas specified in the scope section of this report and in the objectives as outlined in Appendix B. OAS limited the test of transactions to employee samples selected from the City's payroll and health records. Sample testing procedures provide reasonable, but not absolute, assurance that these transactions complied with the California Government Code except as noted.

The findings and conclusions outlined in this report are based on information made available or otherwise obtained at the time this report was prepared.

Respectfully submitted,

Original Signed by Margaret Junker
MARGARET JUNKER, CPA, CIA, CIDA
Chief, Office of Audit Services

Date: July 2011

Staff: Michael Dutil, CIA, Senior Manager
Jacque Conway, CPA, CIA, Manager
Nancy Sayers
Jodi Epperson
Nuntawan Camyre

CITY OF HERCULES

APPENDIX A

BACKGROUND

CITY OF HERCULES

BACKGROUND

California Public Employees' Retirement System

The California Public Employees' Retirement System (CalPERS) provides a variety of programs serving members employed by more than 2,500 local public agencies as well as state agencies and state universities. The agencies contract with CalPERS for retirement benefits, with CalPERS providing actuarial services necessary for the agencies to fund their benefit structure. In addition, CalPERS provides services which facilitate the retirement process.

CalPERS Customer Account Services Division (CASD) manages contract coverage for public agencies and receives, processes, and posts payroll information. CalPERS Benefit Services Division (BNSD) provides services for eligible members who apply for service or disability retirement. BNSD sets up retirees' accounts, processes applications, calculates retirement allowances, prepares monthly retirement benefit payment rolls, and makes adjustments to retirement benefits. Health Account Services (HAS) provides eligibility and enrollment services to the members and employers that participate in the CalPERS Health Benefits Program, including state agencies, public agencies, and school districts.

Retirement allowances are computed using three factors: years of service, age at retirement and final compensation. Final compensation is defined as the highest average annual compensation earnable by a member during the last one or three consecutive years of employment, unless the member elects a different period with a higher average. State and school members use the one-year period. Local public agency members' final compensation period is three years unless the agency contracts with CalPERS for a one-year period.

The employers' knowledge of the laws relating to membership and payroll reporting facilitates the employer in providing CalPERS with appropriate employee information. Appropriately enrolling eligible employees and correctly reporting payroll information is necessary to accurately compute a member's retirement allowance.

CITY OF HERCULES

APPENDIX B

OBJECTIVES

CITY OF HERCULES

REVIEW OBJECTIVES

The objectives of this review were limited to determination of:

- Whether the City complied with applicable sections of the California Government Code (Sections 20000 et seq.) and Title 2 of the California Code of Regulations
- Whether the City followed prescribed reporting and enrollment procedures as they relate to the City's retirement and health benefits contracts with CalPERS.

This review covers the period January 1, 2008 through December 31, 2010. OAS completed a prior review covering the period from January 1, 1996 through December 31, 1998.

PROCEDURES, SAMPLE SIZE, SAMPLE PERIOD, AND FINDINGS

To accomplish the review objectives OAS interviewed key staff to obtain an understanding of the City's personnel and payroll procedures. OAS also reviewed the following documentation:

- Contracts and contract amendments between the City and CalPERS
- Correspondence files maintained at CalPERS
- City Council minutes and City Council resolutions
- City written labor policies and agreements
- City salary, wage and benefit agreements including applicable resolutions
- City personnel records and employee hours worked records
- City payroll information including Summary Reports and PERS listings
- Other documents used to specify payrate, special compensation and benefits for all employees
- Health Benefits Program enrollment records and supporting documentation
- City ordinances as necessary
- Various other documents as necessary

OAS performed the following procedures. A description and the related sample sizes, sample periods and applicable findings for each procedure are included.

- ✓ Reviewed City payroll records and compared the records to data reported to CalPERS to determine whether the City correctly reported employees' compensation.

CITY OF HERCULES

Sample Size and Period: Reviewed 20 employees from the September 2009 (09/09-4) and October 2010 (10/10-4) service periods.

See Finding 1: The City reported non-reportable compensation to CalPERS.

See Finding 2: Compensation earnable was not reported to CalPERS.

- ✓ Reviewed payrates reported to CalPERS and reconciled the payrates to City public salary records to determine whether base payrates reported were accurate, pursuant to publicly available pay schedules that identify the position title, payrate and time base for each position, and duly approved by the City's governing body in accordance with requirements of applicable public meeting laws.

Sample Size and Period: Reviewed 20 employees from the September 2009 (09/09-4) and October 2010 (10/10-4) service periods.

See Finding 3: Payrates were not reported in accordance with publicly available salary information.

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

Sample Size and Period: Reviewed 20 employees from the September 2009 (09/09-4) and October 2010 (10/10-4) service periods.

See Finding 4: The City incorrectly reported payroll information for service period, payrate and member earnings.

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

Sample Size and Period: Eight temporary/part-time employees in fiscal years 2008/2009 and 2009/2010.

See Finding 5: The City did not enroll temporary/part-time employees into CalPERS membership when eligibility requirements were met.

CITY OF HERCULES

- ✓ Reviewed the City's enrollment practices for retired annuitants to determine whether individuals were lawfully employed.

Sample Size and Period: One retired annuitant in review period

No Finding

- ✓ Reviewed the City's enrollment practices to determine whether employees might have been misclassified as independent contractors.

Sample Size and Period: Four independent contractors in review period

See Finding 6: The City did not enroll into CalPERS membership an employee misclassified as an independent contractor but working in an employer/employee relationship.

- ✓ Reviewed the accuracy of the City's calculation and reporting of unused sick leave balances for additional service credit.

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

See Finding 7: The City certified an incorrect amount of unused sick leave to CalPERS.

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

Sample Size and Period: Eight employees and their dependents in the review period

See Finding 8: The City did not provide verification of dependent eligibility for six dependent children enrolled under three members' health plans.

APPENDIX C

CRITERIA

CITY OF HERCULES

CRITERIA

Government Code § 20085, states, in part:

(a) It is unlawful for a person to do any of the following:

(1) Make, or cause to be made, any knowingly false material statement or material representation, to knowingly fail to disclose a material fact, or to otherwise provide false information with the intent to use it, or allow it to be used, to obtain, receive, continue, increase, deny, or reduce any benefit administered by this system....

(b) For purposes of this section, 'statement' includes, but is not limited to, any oral or written application for benefits, report of family relationship..., or continued eligibility for a benefit or the amount of a benefit administered by this system.

(c) A person who violates any provision of this section is punishable by imprisonment in a county jail not to exceed one year, or by a fine of not more than five thousand dollars (\$5,000), or by both that imprisonment and fine.

(d) A person violating any provision of this section may be required by the court in a criminal action to make restitution to this system... for the amount of the benefit unlawfully obtained.

Government Code § 20300, states, in part:

The following persons are excluded from membership in this system:...(b) Independent contractors who are not employees.

Government Code § 20305, subdivision (a) states, in part:

(a) An employee whose appointment or employment contract does not fix a term of full-time, continuous employment in excess of six months is excluded from this system unless:...(2) His or her position requires regular, part-time service for one year or longer for at least an average of 20 hours a week, or requires service that is equivalent to at least an average of 20 hours a week for one year or longer, unless he or she elects membership pursuant to Section 20325. (3)(B) The person completes 125 days, if employed on a per diem basis or, if employed on other than a per diem basis, completes 1,000 hours within the fiscal year, in which case, membership shall be effective not later than the first day of the first pay period of the month following the month in which 125 days or 1,000 hours of service were completed.

Government Code § 20636, subdivision (a), states:

"Compensation earnable" by a member means the payrate and special compensation of the member, as defined by subdivisions (b), (c), and (g), and as limited by Section 21752.5.

CITY OF HERCULES

Government Code § 20636, subdivision (b)(1), states, in part:

“Payrate” means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules.

Government Code § 20636, subdivision (c)(1), states:

Special compensation of a member includes a payment received for special skills, knowledge, abilities, work assignment, workday or hours, or other work conditions.

Government Code § 20636, subdivision (c)(2), states, in part:

Special compensation shall be limited to that which is received by a member pursuant to a labor policy or agreement or as otherwise required by state or federal law, to similarly situated members of a group or class of employment that is in addition to payrate.

Government Code § 20636, subdivision (c)(3), states:

Special compensation shall be for services rendered during normal working hours and, when reported to the board, the employer shall identify the pay period in which the special compensation was earned.

Government Code § 20636, subdivision (c)(6), states, in part:

The board shall promulgate regulations that delineate more specifically and exclusively what constitutes “special compensation” as used in this section. A uniform allowance, the monetary value of employer-provided uniforms, holiday pay...shall be included as special compensation....

Government Code § 20965, states, in part:

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

CITY OF HERCULES

Government Code § 22775, states:

"Family member" means an employee's or annuitant's spouse or domestic partner and any unmarried child, including an adopted child, a stepchild, or recognized natural child. The board shall, by regulation, prescribe age limits and other conditions and limitations pertaining to unmarried children.

Government Code § 22797, states:

The board or an authorized representative may perform audits of each employer and may, at a specified time and place, require the employer to provide information or make available for examination and copying books, papers, data, and records, including, but not limited to, personnel and payroll records, as deemed necessary by the board to determine compliance with the provisions of this part. The information obtained from an employer shall remain confidential.

California Code of Regulations, § 571, subdivision, states:

The following list exclusively identifies and defines special compensation items for members employed by contracting agency and school employers that must be reported to CalPERS if they are contained in a written labor policy or agreement.

California Code of Regulations, § 571, subdivision (a)(1), defines:

Bonus - Compensation to employees for superior performance such as "annual performance bonus" and "merit pay"...A program or system must be in place to plan and identify performance goals and objectives...
Value of Employer-Paid Member Contributions (EPMC) - The full monetary value of employer-paid member contribution (EPMC) paid to CalPERS and reported as an item of special compensation on behalf of all members in a group or class...(A) A resolution or ordinance of the governing body must be provided to CalPERS indicating the group or class, effective date, and the percent or amount of EPMC being paid and reported as an item of special compensation. The resolution or ordinance must be formally adopted by the employer's governing body, and submitted to CalPERS for review and approval.

California Code of Regulations, § 571, subdivision (a)(2), defines:

Educational Incentive – Compensation to employees for completing educational courses, certificates and degrees which enhance their ability to do their job. A program or system must be in place to evaluate and approve acceptable courses.

CITY OF HERCULES

California Code of Regulations, § 571, subdivision (a)(3), defines:

Temporary Upgrade Pay - Compensation to employees who are required by their employer, or governing board or body, to work in an upgraded position/classification of limited duration.

California Code of Regulations, § 571, subdivision (a)(5), defines:

Holiday Pay - Additional compensation for employees who are normally required to work on an approved holiday because they work in positions that require scheduled staffing without regard to holidays. If these employees are paid over and above their normal monthly rate of pay for approved holidays, the additional compensation is holiday pay and reportable to PERS.

Uniform Allowance - Compensation paid or the monetary value for the purchase, rental and/or maintenance of required clothing, including clothing made from specially designed protective fabrics, which is a ready substitute for personal attire the employee would otherwise have to acquire and maintain. This excludes items that are for personal health and safety such as protective vests, pistols, bullets, and safety shoes.

California Code of Regulations § 599.500, contains definitions that apply to the Public Employees' Medical and Hospital Care Act, including the following pertinent provisions:

(f) "Enroll" means to file with the employing office a properly completed Health Benefits Plan Enrollment Form electing to be enrolled in a health benefits plan....

(k) "Eligible" means eligible under the law and this subchapter to be enrolled....

(n) A child attains the status of "family member" at birth.... "family member" includes any unmarried child who is economically dependent upon the employee or annuitant, when there exists a parent-child relationship with the employee or annuitant....

CITY OF HERCULES

APPENDIX D

CITY'S WRITTEN RESPONSE



CITY OF HERCULES
111 CIVIC DRIVE, HERCULES, CA 94547
PHONE: (510) 799-8200

July 15, 2011

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

RE: City of Hercules
Employer Code: 1545
Job Number: P10-034

Dear Ms. Junker:

The draft report on the Audit of our City has been reviewed with the following responses:

Finding # 1

Concur; The City of Hercules reported non-reportable compensation to CalPERS. The lack of staff training and the need for more comprehensive knowledge of California Code of Regulations Section 571 is the cause of the finding. The City has made plans to improve its staff development and training so that our payroll processing will avoid this over reporting in the future. The City will also be assessing the impact of the incorrect reporting and make the adjustments needed.

Finding #2

Concur; The City did not report all compensation earnable to CalPERS. The City was unaware that the provision of uniforms and ongoing maintenance of uniforms paid directly by the City was required to be included as an employee income/benefit. The City will also be assessing the impact of the incorrect reporting and make the adjustments needed.

Finding #3

Concur; The City did not report pay rates consistent with publicly available salary information. The sampling date ranges coincided with change in the fiscal year, which

may have contributed to the discrepancy in the calculation. The City will assess the impact of the incorrect reporting and make the adjustments needed.

Finding #4

Concur; The City incorrectly reported retroactive pay information for service period, pay rate, and member earnings. The City was not aware that lump sum payments had to be reported separately by fiscal year. The City will work with PERS to make any necessary adjustments.

Finding #5

Concur; The City did not enroll temporary/part-time employees into CalPERS membership when eligibility requirements were met. The City is now aware of this reporting requirement and is modifying its payroll processing procedures to signal when this reporting is required. The City will also be assessing the impact of the incorrect reporting and make the adjustments needed.

Finding# 6

Concur; The City misclassified an individual who worked in an employer/employee relationship as an independent contractor. The City was unaware in April of 2006 that the employee's scope of work would eventually evolve into what would be considered a permanent employee status. The City has made plans to improve its staff development and training so that our payroll processing will avoid this under reporting in the future. The City will also be assessing the impact of the incorrect reporting and make the adjustments needed.

Finding# 7

Concur; The City certified an incorrect amount of unused sick leave to CalPERS. This was an arithmetic error which has been addressed and corrected.

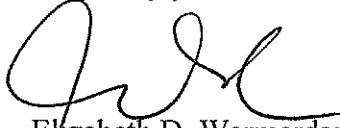
Finding# 8

Concur; The City did not provide verification of dependent eligibility for six dependent children enrolled under three members' health plans. It was not past practice to collect this information. We have corrected this issue and collected all dependent verification on these six people, and will make sure this information is collected for all future employees.

With the many challenges and changes the City has endured the last half year, we thank CalPERS and its staff for the flexibility in extending the deadline for submission of these responses and for the guidance given to us during the audit and review. We look forward to working more closely with CalPERS to avoid future misreporting.

If you have questions, please do not hesitate to contact Janielyn Bayona at 510-799-8222.

Very truly yours,

A handwritten signature in black ink, appearing to read 'E. Warmerdam', written in a cursive style.

Elizabeth D. Warmerdam
Interim City Manager
City of Hercules
510-799-8231

cc: Mary Lynn Fisher, Chief, BNSD, CalPERS
Darryl Watson, Chief, CASD, CalPERS
Don Martinez, Interim Assistant Chief, HAS, CalPERS