



STAFF REPORT	
SUBJECT: Authorization of a Side Letter with the Clearlake Police Officer Association and the Clearlake Middle Management Association	MEETING DATE: July 6, 2023
SUBMITTED BY: Melissa Swanson, Administrative Services Director/City Clerk	
PURPOSE OF REPORT: <input type="checkbox"/> Information only <input type="checkbox"/> Discussion <input checked="" type="checkbox"/> Action Item	

WHAT IS BEING ASKED OF THE CITY COUNCIL/BOARD:

The City Council is being asked to approve a Side Letter of Agreement with the Clearlake Police Officers Association (“CPOA”) and the Clearlake Middle Management Association (“MMA”) in response to an audit of City payroll by California Public Employees Retirement System (“CalPERS”).

BACKGROUND/DISCUSSION:

Earlier this year, City staff was notified that CalPERS would be reviewing Holiday Pay reporting for safety members. The City was one of 40 public agency employers throughout the state audited by CalPERS to determine whether Holiday Pay reported met the CalPERS definition of Holiday Pay, whether that pay was calculated correctly in accordance with the labor agreements and whether the Holiday Pay was calculated in compliance with compensation reporting requirements pursuant to Government Code (“GC”) sections 20636 and 7522.34 and Title 2 of the California Code of Regulations (“CCR”) sections 571 and 571.1. The review covered July 1, 2019 through June 30, 2022.

Holiday Pay is defined in CCR sections 571 and 571.1 as 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. In short, this special compensation includes payments for special skills, knowledge, abilities, work assignments, workdays or hours, or other work conditions. The special compensation must be outlined in the labor agreement approved by the employer’s governing body. In the City’s case, Holiday Pay applied to sworn personnel covered by the CPOA and the MMA Memorandum of Understanding (“MOU”).

CalPERS completed the audit for all agencies and determined in their findings that 85%, 34 of 40 employers, did not report Holiday Pay in compliance with the GC and CCR. As it pertains to City staff, CalPERS returned with two specific findings:

The Employer incorrectly reported Holiday Pay for three sampled active employees and one sampled retired employee. Specifically, the Employer included additional compensation in their calculation of Holiday

Pay and reported Holiday Pay as a lump sum amount instead of for the periods earned... In addition, the Employer included Peace Officer Standard Training (POST) Certificate Pay, Bilingual Pay, and Longevity Pay when calculating Holiday Pay; however the [MOU] for the [MMA] and [CPOA] did not identify these items of compensation as being included in the hourly rate. As a result, Holiday Pay was not correctly reported.

Prior to the CalPERS audit, staff had discovered the reporting timing error and had corrected the reporting to report Holiday Pay as it was earned, instead of in one lump sum one time per year. Therefore, staff agreed with the first finding and reported to CalPERS that it would be corrected retroactively in the CalPERS system. Correcting this error was simply a matter of timing and no funding corrections were necessary.

However, in the second finding, CalPERS stated the inclusion of several special pays was incorrect because the MOUs did not specifically state the special pays by name. Instead, each MOU states Holiday Pay will be based on a "day's salary" for the employee. Despite staff's attempt to dispute the finding and state the intent of the language of the MOUs was to include such special pays as a "day's salary" for the employee, CalPERS requires the City to correct the language or face possible financial consequences to current members and retirees by retroactively recalculating retirement benefits based on the finding. In this case, due to new legislation, the City would be responsible for repayment to CalPERS and administrative costs of any and all overpayments to retirees, which could be substantial, as determined by CalPERS.

CalPERS has agreed to allow the City to retroactively correct the CPOA and MMA MOUs for that time period to reflect CalPERS language specifying special pays included in Holiday Pay calculation. To that end, staff met with the CPOA and MMA to discuss the audit and the findings and propose the attached Side Letters of Agreement correcting the Holiday Pay language. Both bargaining units understand and agree to the updated language. Attached are the proposed Side Letters of Agreement for Council review.

Holiday Pay was eliminated for both bargaining units effective July 1, 2021 for reasons unrelated to CalPERS and the corrections are only for the time period audited by CalPERS as stated.

OPTIONS:

1. Move to approve a Side Letter of Agreement with the Clearlake Police Officers Association and the Clearlake Middle Management Association in response to an audit of City payroll by California Public Employees Retirement System ("CalPERS")
2. Other direction

FISCAL IMPACT:

None \$ Budgeted Item? Yes No

Budget Adjustment Needed? Yes No If yes, amount of appropriation increase: \$

Affected fund(s): General Fund Measure P Fund Measure V Fund Other:

Comments:

STRATEGIC PLAN IMPACT:

- Goal #1: Make Clearlake a Visibly Cleaner City
- Goal #2: Make Clearlake a Statistically Safer City
- Goal #3: Improve the Quality of Life in Clearlake with Improved Public Facilities
- Goal #4: Improve the Image of Clearlake
- Goal #5: Ensure Fiscal Sustainability of City
- Goal #6: Update Policies and Procedures to Current Government Standards
- Goal #7: Support Economic Development

SUGGESTED MOTIONS:

Move to approve a Side Letter of Agreement with the Clearlake Police Officers Association and the Clearlake Middle Management Association in response to an audit of City payroll by California Public Employees Retirement System (“CalPERS”).

- Attachments:** 1) Side Letters of Agreement