CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Authorize the Mayor to send a letter opposing Senate Bill 278 - Public Employees' Retirement System: Disallowed Compensation. Benefit Adjustments.**
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	4/20/2021
Staff Contact:	**Jeannine Seher, Director of Human Resources, 408-586-3086**
Recommendation:	Authorize the Mayor to send a letter opposing Senate Bill 278 - Public Employees' Retirement System: Disallowed Compensation. Benefit Adjustments.

Background:

On January 29, 2021, Senator Leyva introduced Senate Bill 278, Public Employees' Retirement System: Disallowed Compensation. Benefit Adjustments. This proposed legislation, as amended on March 23, 2021, and if passed, would require public agencies to directly pay retirees and/or their beneficiaries, retirement benefits disallowed by CalPERS.

The Public Employees' Retirement Law (PERL), existing law, establishes the Public Employees' Retirement System (PERS), which provides a defined benefit to members of the system, based on final compensation, credited service, and age at retirement, subject to certain variations. The City of Milpitas contracts with PERS for a retirement benefit, making City employees members of PERS. The PERL is comprised of complex laws defining compensable earnings and retirement formulas which results in an employee's retirement benefit.

The California Public Employees' Pension Reform Act of 2013 (PEPRA), modified the PERL, generally requiring a public retirement system, as defined, to modify its plan or plans to comply with the act. PEPRA, among other things, establishes new defined benefit formulas and caps on pensionable compensation.

PERS is administered by its board of administration, which is responsible for correcting errors and omissions in the administration of the system and the payment of benefits. Existing law requires the board to correct all actions taken as a result of errors or omissions of the state or a contracting agency, in accordance with certain procedures, when an error occurs for either a classic PERS or PEPRA member

Analysis:

CalPERS provides a defined benefit to a public sector employee who vests in the plan. A defined benefit plan is based on a defined formula rather than a retirement based on contributions and earnings, which is known as a defined contribution plan. Depending on the formula (Safety or Miscellaneous; Classic or PEPRA) an employee's retirement is based on the benefit factor, years of service and final compensation (highest 12 or 36 consecutive months).

If an error is discovered in the compensation reported to CalPERS for an employee, the employer can make an adjustment during the term of an employee's active service. If an error is discovered after retirement, PERS makes an adjustment, recalculating the retirement pension to exclude disallowed compensation that was used to calculate retirement benefits, so that the retiree only receives the legally required and earned retirement payment.

The legislation establishes new procedures under PERL for cases in which PERS determines that the benefits of a member or annuitant are, or would be, based on disallowed compensation under PERL, as modified or supplemented by PEPRA. The bill would also apply these procedures retroactively to determinations made on or after January 1, 2017, if an appeal has been filed and the employee member, survivor, or beneficiary has not exhausted their administrative or legal remedies. SB 278 places the liability for disallowed retirement benefits on public agencies - abdicating all responsibility previously held by CalPERS to ensure that retirement benefits are calculated and administered correctly. SB 278 could provide a retroactive benefit enhancement based on compensation deemed non-reportable by CalPERS that would further strain the City's budget at a time where the impacts of COVID-19 and retirement obligations are making it exceedingly difficult to effectively provide critical services for the public. Further, if a retiree was incorrectly credited with a benefit, SB 278 would ensure that these unearned benefits would continue. There is no incentive for PERS or the employee to bring a miscalculation to the attention of the City.

Although an employee should expect retirement calculations to be accurate, requiring an employer to pay the difference between the correct benefit and the erroneous amount received in error, may put a further strain on the City's budget. This legislation also places an administrative burden on employers to make ongoing payments for these purposes.

SB 278 could result in the City issuing unlawful payments to former employees and/or their beneficiaries. Continued payment of a disallowed benefit to a retiree would constitute a gift of public funds, in violation of Section 6, Article 16 of the California Constitution. Such violation would leave a public agency left to defend itself from costly litigation lawsuits filed by members of the public.

Policy Alternative:

Alternative: City Council could choose to not take a position on the legislation.

Pros: If Council chooses not to take a position on the legislation, the City would remain a neutral party with regard to the proposed legislation.
Cons: If the City Council wants to be on the record as opposing the legislation, by not taking a position, the City will be missing out on the opportunity to be on record in opposition of the proposed legislation.

Reason for Not Recommending: The City has a vested interest in ensuring its employees are receiving what they are legally entitled to, while ensuring public funds are spent appropriately.

Fiscal Impact:
At this time, the costs of the legislation are unknown. If an error is made and discovered, disallowed benefits would be continued to the City's retirees and their survivors by making the employer responsible for paying the difference between the higher erroneous benefit and the adjusted correct benefit.

California Environmental Quality Act:
Approval of the recommendation is not an activity defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines 15061(b) (3) and 15378(b)(4) either because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and/or because the action is financial and/or administrative and does not directly impact the environment.

Recommendation:
Authorize the Mayor to send a letter opposing Senate Bill 278 - Public Employees' Retirement System: Disallowed Compensation. Benefit Adjustments.

Attachment:
SB 278 (as amended March 23, 2021)
Draft letter of opposition