



**DATE:** November 15, 2016  
**TO:** Mayor and City Council  
**FROM:** Director of Human Resources

## **SUBJECT**

Adoption of Resolutions Amending the Side Letter Agreements between the City of Hayward and the International Association of Firefighters, AFL-CIO, Local 1909, and the City of Hayward and the Hayward Police Officers Association, HPOA that Clarify the Employee Paid-Employer Share Contribution Amounts for Public Employee Pension Reform Act ("PEPRA") Employees

## **RECOMMENDATION**

That the City Council adopts the attached resolutions approving the side letter agreements between the City of Hayward and the International Association of Firefighters, AFL-CIO, Local 1909 and the City of Hayward and the Hayward Police Officers Association that clarify the employee paid-employer share contribution amounts for Public Employee Pension Reform Act ("PEPRA") employees.

## **BACKGROUND**

The City contracts with CalPERS for retirement benefits. On June 25, 2013, the City Council adopted Ordinance 14-01 approving the amendment to the City of Hayward's CalPERS public safety contract for PEPRA Fire members. This negotiated amendment required PEPRA Fire members (employees hired on or after January 1, 2013) to pay a total of 15% toward retirement costs. The intent was for these employees to contribute the same 15% that classic members pay, which would be comprised of the employee share (determined by PEPRA), which at the time was 11.25% and the difference of 3.75% as cost sharing. The breakdown of the contributions would change depending on what the PEPRA mandated amount was, but would never exceed 15% total employee contribution.

Similarly, on July 12, 2015 the City Council adopted Ordinance 15-20 approving the amendment to the City of Hayward's CalPERS public safety contract for PEPRA Police members. This negotiated amendment required PEPRA Police members (employees hired on or after January 1, 2013) to pay a total of 15% toward retirement costs. Again, the intent was for these employees to contribute the same 15% that classic members pay, which would be comprised of the employee share (determined by PEPRA), which at the time was 12.75% and the difference of 2.25% as cost sharing. The breakdown of the contributions would change

depending on what the PEPRA mandated amount was, but would never exceed 15% total employee contribution.

## **DISCUSSION**

Effective July 1, 2016, the employee rate for PEPRA Fire members decreased from 11.25% to 9.75%, which per the terms of the agreement would mean that the cost share portion would increase from 3.75% to 5.25%. The employee rate for PEPRA Police members also decreased from 12.75% to 12.00%, which per the terms of the agreement would mean that the cost share portion would increase from 2.25% to 3.00%.

Although CalPERS approved the current agreements at the time the contract was amended, it has since determined that any changes to the breakdown of the CalPERS contributions must be specific so that the percentage amounts are broken down into numerical values and this requires a contract amendment.

Government Code Section 20516, which allows for cost sharing, provides that the language in the MOU “shall specify the exact percentage of member compensation that shall be paid toward the current service cost of the benefits by members. The member contributions shall be contributions over and above normal contributions otherwise required by this part and shall be treated as normal contributions for all purposes of this part.”

CalPERS believes this language requires a specific numerical number in the agreement that shows the exact percentage of the cost share deduction. The City fundamentally disagrees with CalPERS’ understanding that the language requires a specific numeric breakdown of the contributions. Rather, staff believes that the language in the agreement is in fact specific because it clearly indicates that the cost share is the difference between 15% and the PEPRA mandated employee share. Staff further believes that the current agreements are sufficient and there should be no requirement for a contract amendment each time CalPERS changes the PEPRA minimum, which is unknown at the time the agreements are negotiated. Due to the disagreement with CalPERS, the City will be pursuing a formal request for CalPERS to reconsider. In the meantime, to provide employees with credit for their full 15% contribution, a side letter clarifying the PEPRA cost sharing language is required. The City has met with both Local 1909 and HPOA and has reached agreement on the clarifying language presented in Attachment IV and Attachment V.

## **FISCAL IMPACT**

There is no fiscal impact associated with this report. Both PEPRA Fire and PEPRA Police members will continue to contribute 15% to fund their CalPERS pensions, as previously agreed to (Resolution 13-097, Resolution 14-122). However, the disagreement with CalPERS over the need to amend the City’s contract each time the percentages change results in substantial staff work from Human Resources and three action items before the City Council.

## **NEXT STEPS**

Human Resources staff will work with CalPERS to complete the contract amendment process. In accordance with Government Code Section 20516, staff will return to Council for the approval of a resolution of intention and introduction of an ordinance to amend the CalPERS contract on December 20, 2016. If approved, staff will return for the final reading and adoption of the ordinance on January 17, 2017. Given no changes in the aforementioned dates, the CalPERS contract amendment will be effective February 20, 2017.

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*Recommended by:* Nina S. Collins, Director of Human Resources

Approved by:



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Kelly McAdoo, City Manager