



**DATE:** December 13, 2016

**TO:** Mayor and City Council

**FROM:** Director of Human Resources

**SUBJECT**

Adoption of a Resolution of Intention to Approve an Amendment to the City of Hayward Contract with the California Public Employees Retirement System (PERS) and Introduction of An Ordinance to Approve the Contract Amendment and Authorize Staff to Execute the Contract

**RECOMMENDATION**

That the City Council adopts the Resolution of Intention to approve an amendment to the City of Hayward contract with the California Public Employees Retirement system (PERS), introduces an ordinance to approve the contract amendment, and authorizes staff to execute the contract.

**BACKGROUND**

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 PEPRAs Fire members. This negotiated amendment required PEPRAs 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 PEPRAs), 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 PEPRAs 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 PEPRAs Police members. This negotiated amendment required PEPRAs 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 PEPRAs), 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 PEPRAs mandated amount was, but would never exceed 15% total employee contribution.

## **DISCUSSION**

The existing CalPERS contract for safety members (sworn police and fire) requires payment of the required published employee rate plus an additional contribution to equal a total of fifteen percent (15%) of their salaries for the employees' share of retirement costs. 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%.

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. 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. To implement any changes to the retirement program, it is necessary to amend the City's existing contracts with CalPERS each time there is a change to the rates. In order to provide employees with credit for their full 15% contribution, a side letter clarifying the PEPRA cost sharing language was required and the clarifying language for both Local 1909 and HPOA was adopted by Council on November 15, 2016. The City does not agree with this interpretation of the law and Human Resources is working with the City Attorney's office to dispute this and possibly avoid the need for a formal contract amendment each time the PEPRA contribution changes.

The Resolution authorizes staff to work with CalPERS to amend the public safety contract to amend the cost sharing provision. The proposed Ordinance approves the amendment and authorizes staff to execute the contract effective February 20, 2017.

## **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 separate action items before the City Council at three different meetings.

## **NEXT STEPS**

Human Resources staff will work with the bargaining units and Finance Department staff to complete the contract amendment process. The final reading of the Ordinance will be presented during a Public Hearing on January 17, 2017. If approved, the Ordinance will take effect on February 16, 2017. The contract amendment will be effective February 20, 2017.

*Prepared by:* Ali Adams, Human Resources Analyst II

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

Approved by:

A handwritten signature in black ink, appearing to read 'K. McAdoo', is positioned above a horizontal line.

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Kelly McAdoo, City Manager