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MENDOCINO COUNTY
EMPLOYEES' RETIREMENT ASSOCIATION
625-B KINGS COURT
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Date: December 14, 2016
To: Board of Retirement
From: James Wilbanks, Retirement Administrator
Subject: Resolution 2016 – 04, Defining Compensation Earnable Pursuant to Government Code §31461 for Members who are not subject to Government Code §7522.34 (Non-PEPRA Members)

Attached you will find a proposed Resolution 2016 – 04, Defining Compensation Earnable Pursuant to Government Code §31461 for Members who are not subject to Government Code §7522.34 (Non-PEPRA Members) for your consideration. The presented resolution is in mark-up from the Board of Retirement Resolution 2016 – 01 for your convenience.

We were notified by Mendocino County that two new pay codes had been created. The first new pay code is 432, Insurance Stipend – South Coast, Covelo Resident Deputy. After review of information from the County, we believe the pay item should be included in compensation earnable for legacy, or Non-PEPRA, members. The draft resolution reflects this position.

Additionally, the proposed Resolution clarifies that an employee who elects not to take the County Health Insurance Supplement and instead receive payments via the second new pay code 432, Medical Expense Reimbursement Plan, shall not have such payments included in Compensation Earnable.

Finally, a paragraph has been added to the Resolution to make clear that any new pay codes created by an employer shall be excluded from Compensation Earnable until the Board of Retirement amends the resolution to include the newly create pay code items in Compensation Earnable. This language clarifies that pay codes are excluded from Compensation Earnable by default, and the only means for inclusion is by action of the Board of Retirement.

I recommend the Board adopt the Resolution as presented.

MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
RESOLUTION 2016 – ~~01-04~~

TO SUPERSEDE RESOLUTION ~~2014-05~~2016-01 DEFINING COMPENSATION EARNABLE PURSUANT TO GOVERNMENT CODE §31461 FOR MEMBERS WHO ARE NOT SUBJECT TO GOVERNMENT CODE §7522.34 (NON-PEPRA MEMBERS)

WHEREAS, for those current members who became active members prior to January 1, 2013, and those members who became active members on or after January 1, 2013, but who are not subject to Government Code §7522.34 of the California Public Employees’ Pension Reform Act (**PEPRA**), the determination of compensation earnable for remuneration earned by those members is governed by Government Code §31461; and

WHEREAS, Government Code §31461 provides that compensation earnable by a member means the average compensation as determined by the Board, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay; and

WHEREAS, Government Code §31461 provides that this Board determine which items of remuneration earned by members shall constitute “compensation earnable”; and

WHEREAS, the Board has reviewed the current pay items and has determined which of those items are to be included in “compensation earnable” and which items are not to be included; and

WHEREAS, it is necessary for this Board from time to time to amend its determinations of compensation earnable due to changes in the compensation schedules of MCERA employers or changes in the law; Therefore be it

RESOLVED that effective May 18, 2016, resolution number 2014-05 is superseded, and pursuant to Government Code §31461 as interpreted by the courts, the Board hereby makes the following determinations as to what is included in “compensation earnable” and items of remuneration that are not included:

1. Compensation earnable shall include:

| Pay Code | Description |
|-----------------|--|
| 303 | Vacation Pay-Out Non Management |
| 304 | Vacation Pay-Out Management |
| 406 | Shift PM |
| 407 | Shift AM |
| 409 | Supervisor Shift |
| 417 | 32.50 Bilingual |
| 418 | 18.00 Bilingual |
| 422 | Confidential 5% |
| 424 | On Call Regular – Probation |
| 427 | On Call Weekend/Holiday – Probation |
| <u>432</u> | <u>Insurance Stipend – South Coast, Covelo Resident Deputy</u> |
| 434 | Clothing Allowance - Probation |
| 435 | Supplemental Pay to similarly situated members in the same grade or class. |

| Pay Code | Description |
|-----------------|------------------------------------|
| 437 | Retroactive Longevity |
| 438 | 2.5% Longevity |
| 439 | 5% Longevity |
| 440 | On Call Regular – SEIU |
| 441 | On Call Weekend/Holiday – SEIU |
| 443 | 7.5% Longevity |
| 444 | 10% Longevity |
| 445 | Car Allowance |
| 452 | Retroactive Salary Adjustment |
| 456 | Board Of Supervisor Auto Allowance |
| 457 | BA Incentive |
| 514 | Standby Pay |
| 515 | Animal Handler |
| 520 | Field/Specialized Training |
| 523 | Bilingual 5% MCLEMA |
| 525 | Uniform Allowance |
| 528 | Covelo Housing |
| 529 | Covelo Bonus |
| 530 | Officer In Charge |
| 531 | Officer In Charge Level 2 |
| 532 | Detective/Investigator Premium |
| 556 | AA/AS/Supv Incentive MCLEMA |
| 557 | Supv Incentive MCLEMA |
| 558 | 10% B/A Incent |
| 559 | AA/AS DSA 3% |
| 567 | Bilingual 3% MCLEMA |
| 926 | Uniform Non-Cash |

2. Compensation Earnable, at a minimum, shall not include, in any case, the following pay items.

A. The following pay codes are not included:

| <u>Pay Code</u> | <u>Description</u> |
|-----------------|---|
| <u>430</u> | <u>Medical Expense Reimbursement Plan</u> |

A.B. 2. Pursuant to Government Code §31461(b) compensation earnable, shall not include in any case the following:

1. A.B. Any compensation determined by the Board to have been paid to enhance a member's retirement benefit under that system. That compensation may include:

(1) Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member, and which was converted to and received by the member in the form of a cash payment in the final average salary period.

(2) Any one-time or ad hoc payment made to a member, but not to all similarly situated members in the member's grade or class.

(3) Any payment that is made solely due to the termination of the member's employment, but is received by the member while employed, except those payments that do not exceed what is earned and payable in each 12-month period during the final average salary period regardless of when reported or paid.

2. ~~B.~~ Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, in an amount that exceeds that which may be earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid.
3. ~~C.~~ Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.
4. ~~D.~~ Payments made at the termination of employment, except those payments that do not exceed what is earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid.

3. Pursuant to Government Code §31641(c), the terms listed above in paragraph 2 are intended to be consistent with and not in conflict with the holdings in *Salus v. San Diego County Employees Retirement Association* (2004) 117 Cal.App.4th 734 and *In re Retirement Cases* (2003) 110 Cal.App.4th 426.

FURTHER RESOLVED that any pay codes not specifically listed in this Resolution as included in compensation earnable shall be excluded from compensation earnable. In the event a new pay item is created by a plan sponsor, the new pay item shall be excluded from compensation earnable unless, and until, this resolution is amended by the Board of Retirement to include the pay item in compensation earnable.

FURTHER RESOLVED that the above listed determinations by the Board of what is included or not included in compensation earnable, shall be in effect until such time as action taken by the Board or action by the Legislature or the Courts as a matter of law requires a different determination.

The foregoing resolution introduced by Board Member _____, seconded by Board member _____, and carried this 14th day of December, 2016, by the following vote:

Ayes:
Noes:
Abstain:
Absent:.

WHEREUPON, The Chair declared said Resolution adopted, and SO ORDERED.

Board of Retirement Chair

Attest: _____
James R. Wilbanks, Ph.D.
Retirement Administrator