

SBCERA Resolution No. 2021-9

**COMPENSATION EARNABLE DETERMINATION
REQUIRED BY THE ALAMEDA DECISION
CANINE PAY**

WHEREAS, *the San Bernardino County Employees' Retirement Association (SBCERA) Board of Retirement (BOARD) is required by Government Code sections 31461 and 31542, as well as BOARD Benefits Policy No. 26, Compensation Earnable and Pensionable Compensation, to determine compensation earnable for Tier 1 members.*

WHEREAS, *on July 30, 2020, the California Supreme Court issued its decision in Alameda County Deputy Sheriff's Assn. v. Alameda County Employees' Retirement Assn., et al. (2020) 9 Cal.5th 1032 ("Alameda") (the "Alameda Decision").*

WHEREAS, *on August 6, 2020, the Board adopted Resolution 2020-5, complying with the Alameda Decision's directives regarding the Board's lack of authority to include in-kind benefits in Compensation Earnable ("Alameda Exclusions"), and applied that directive to all retiree payroll for individuals who are legacy members who retired on or after July 30, 2020.*

WHEREAS, *in Resolution 2020-5, the Board also directed the refund of active member contributions that were made on pay codes for the Alameda Exclusions prior to July 30, 2020 to SBCERA members who did not retire before that date and who therefore will not have the Alameda Exclusions included in the calculation of their retirement allowances from SBCERA.*

WHEREAS, *in Resolution 2020-5, the Board further complied with the Alameda decision's directives regarding mandatorily excluded pay items required by amendments to Government Code section 31461, effective January 1, 2013 ("PEPRA Exclusions"),*

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and applied that directive to all retiree payroll for individuals who retired on or after January 1, 2013. The Board ordered that, effective with the August 2020 payroll, SBCERA will recalculate and adjust amounts paid to such retirees if their retirement allowances previously included the PEPRA Exclusions.

WHEREAS, *as used herein, the term “PEPRA Exclusions” refers to any payments that are not permitted by subdivision (b)(2), (3) or (4) of Government Code section 31461 to be included in “compensation earnable,” including, among other items, payments received by the member for additional services rendered outside of normal working hours, whether paid in lump sum or otherwise.*

WHEREAS, *this Resolution is intended to comply with the requirements of the Internal Revenue Code of 1986, as amended or replaced from time to time and the regulations issued thereunder (the “Code”) as applicable.*

WHEREAS, *the BOARD, determines that Canine Pay, Canine Officer Pay, and all other similarly described pay items that compensate certain officers and employees who agree to be assigned a canine, for an additional set number of hours (typically eight (8) hours), beyond their regular 80 hours in a bi-weekly period, for the “care, feeding and maintenance” of a canine, and which is considered additional “hours worked” for purposes of determining overtime (collectively “Canine Pay”), is expressly excluded from compensation earnable pursuant to Government Code section 31461 (b)(3) because it constitutes “additional pay for services rendered outside of normal working hours,” in that the described care, feeding and maintenance, of the canine is, by definition, a service provided to the County during additional hours when the employee or officer is no longer on-duty. As a result, Canine Pay is a PEPRA Exclusion as used herein.*

THEREFORE BE IT RESOLVED *that effective as of December 2, 2021, the*

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foregoing recitals are incorporated herein by this reference, and the following actions are authorized by the BOARD and required of SBCERA:

- 1) Unless so directed by the Internal Revenue Service or a court of competent jurisdiction, no recoupment shall be made directly from retirees for any overpaid amounts as a result of the PEPRA Exclusions having been included in the calculation of a retiree's retirement benefit prior to the Alameda decision.*
- 2) Beginning with the December 2021 periodic payroll, SBCERA shall recalculate the retirement allowances of any members who retired from SBCERA on or after January 1, 2013, if their final average compensation calculation included Canine Pay ("Affected Retirees").*
- 3) Staff shall make a corrective distribution (including any applicable earnings in accordance with federal tax rules) on the overpaid contributions reported on PEPRA Exclusions to Affected Retirees anytime on and after January 1, 2013, provided the member's contributions on Canine Pay exceed any retirement allowance payments associated with that portion of the payment that is associated with Canine Pay. In the event no contributions associated with Canine Pay remain for a retiree, no corrective distribution of contributions shall be made.*
- 4) Any amounts that SBCERA is unable to collect from SBCERA's active, deferred, and retired members as a result of this corrective action shall be collected instead through participating employer payments on the unfunded actuarial liability in accordance with recommendations from SBCERA's actuary.*
- 5) Beginning with the December 2021 periodic payroll, SBCERA shall*

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recalculate the Affected Retirees' benefits and pay the corrected amount (without Canine Pay) prospectively.

6) *Regarding SBCERA active and deferred members, staff, as soon as practicable, shall implement a corrective distribution (including any applicable earnings in accordance with federal tax rules) to such members for employee contributions reported and or associated with Canine Pay while in active service from January 1, 2013 through the date of implementation of the corrective distribution.*

7) *Beginning with Pay Period 26, which starts on December 4, 2021, employers shall not collect or report to SBCERA any contributions on the excluded Canine Pay, or any other similarly described pay item.*

This resolution supplements Resolution 2020-5 and supersedes any previous resolutions for employer pay codes of employee compensation to the contrary.

IN WITNESS WHEREOF, *the above Resolution for SBCERA is hereby adopted by the BOARD on this 2nd day of December, 2021.*

SAN BERNARDINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

By: _____
Neal Waner, Chair

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STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN BERNARDINO)

*I, **Deborah S. Cherney**, Secretary to the BOARD of SBCERA, hereby certify the foregoing to be a full, true and correct copy of the record of the action taken by the BOARD, by vote of the members present, as the same appears in the Official Minutes of said Board at its meeting of December 2, 2021.*

Deborah S. Cherney