



# San Joaquin County Employees Retirement Association

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## A G E N D A

**SPECIAL MEETING  
SAN JOAQUIN COUNTY EMPLOYEES RETIREMENT ASSOCIATION  
BOARD OF RETIREMENT  
THURSDAY, OCTOBER 15, 2020  
AT 3:00 PM  
Location: Via Zoom Client**

In accordance with current state and local emergency proclamations and orders, this Board Meeting will be held virtually via Zoom Client.

The public may only attend the meeting by (1) clicking here <https://us02web.zoom.us/j/81932769997> and following the prompts to enter your name and email, or (2) calling (669) 219-2599 or (669) 900-9128 and entering Meeting ID 81932769997#.

Persons who require disability-related accommodations should contact SJCERA at (209) 468-9950 or [AndreaB@sjcera.org](mailto:AndreaB@sjcera.org) at least forty-eight (48) hours prior to the scheduled meeting time.

### 1.0 ROLL CALL

### 2.0 PLEDGE OF ALLEGIANCE

### 3.0 PUBLIC COMMENT

#### 3.01 Persons wishing to address the Board of Retirement should follow the steps below. Speakers are limited to three minutes and are expected to be civil and courteous.

If joining via Zoom from your PC or Mac, and you wish to make a Public Comment, please select "Participants" found in the toolbar at the bottom of your screen. From there you will see the option to raise and lower your hand.

If joining via Zoom from your mobile device, and you wish to make a Public Comment, please select the "More" option found in the toolbar at the bottom of your screen. From there you will see the option to raise and lower your hand.

If joining via Zoom from your tablet such as an iPad, and you wish to make a Public Comment, please click on the icon labeled "Participants" typically located at the top right of your screen and then tap the hand icon next to your device in the participants column to raise your digital hand.

If dialing in from a phone for audio only and you wish to make a Public Comment, please dial \*9 to "raise your hand".

Except as otherwise permitted by the Ralph M. Brown Act (California Government Code Sections 54950 et seq.), no deliberation, discussion or action may be taken by the Board on items not listed on the agenda. Members of the Board may, but are not required to: (1) briefly respond to statements made or questions posed by persons addressing the Board; (2) ask a brief question for clarification; or (3) refer the matter to staff for further information.

### 4.0 RETIREMENT-ELIGIBLE EARNINGS AND ALAMEDA DECISION

#### 4.01 Resolution 2020-10-03 titled "Alameda Implementation as Applied to Compensation Earnable and Pensionable Compensation"

#### 4.02 Resolution 2020-10-04 titled "Compensation Earnable and Pensionable Compensation for SJCERA Members"

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9

**4.03** Board to consider and take possible action regarding earnings codes and adopt Resolution 2020-10-03 and Resolution 2020-10-04

**5.0 COMMENTS**

**5.01** Comments from the Board of Retirement

**6.0 CLOSED SESSION**

**6.01 CONFERENCE WITH LEGAL COUNSEL - PENDING LITIGATION  
CALIFORNIA GOVERNMENT CODE SECTION 54956.9(d)(2)**

**6.02** Significant Exposure of Litigation (1 Case)

**7.0 CALENDAR**

**7.01** Board Meeting, November 6, 2020 at 9:00 AM

**7.02** Administrative Committee Meeting, November 12, 2020 at 9:00 AM

**8.0 ADJOURNMENT**



**Board of Retirement Meeting**  
San Joaquin County Employees' Retirement Association

**Agenda Item 4.0**

October 15, 2020

**SUBJECT: Retirement Eligible Earnings and *Alameda* Decision Implementation**

**SUBMITTED FOR: \_\_\_ CONSENT      X   ACTION    \_\_\_ INFORMATION**

**RECOMMENDATION**

Adopt staff's recommendations as outlined in this memo and in Resolutions 2020-10-03 and 2020-10-04.

**PURPOSE**

To comply with the requirements of the law as clarified by the California Supreme Court's *Alameda* decision, which are outlined in the Mandatory PEPRA Exclusions and Mandatory *Alameda* Exclusions sections of this memo and in the accompanying resolutions.

**DISCUSSION**

**Mandatory PEPRA Exclusions**

Excluded Pay types

Earnings codes for hours in excess of normal working hours. Examples include Standby Pay and Correctional Briefing Pay. See the earnings codes list attached to Resolution 2020-10-04 for details. Red font indicates a proposed change from current practice, and the legal basis for that change is cited in the Legend columns.

Implementation

- Active and Deferred Members
  - If currently active or deferred members have paid contributions on PEPRA-excluded pay types since January 1, 2013, those contributions will be returned plus interest at the current assumed rate of return of 7 percent.
  - Upon retirement, the benefit calculation for these currently active and deferred members will not include PEPRA-excluded pay types.
- Retired Members
  - Affects only those who retired on or after January 1, 2013.
    - Members who retired before 2013 are NOT affected, nor are their survivors who are receiving a continuance benefit, regardless of the date of death of the member.
  - If the affected retiree's benefit calculation included a PEPRA-excluded pay type, the benefit amount will be adjusted to remove excluded pay types from the September 1, 2020 payment forward.
  - To determine the amount of the adjustment, SJCERA will calculate the total contributions paid on PEPRA-excluded pay types since January 1, 2013, compared to the total amount of overpaid benefits (benefits calculated using PEPRA-excluded pay types).

- If the total overpaid contributions on excluded pay types exceed the total amount of overpaid benefits, SJCERA will pay the retiree the difference plus interest at the current assumed rate of return of 7 percent.
- If the total overpaid benefits exceed the overpaid contributions on excluded pay types, SJCERA will collect the amount of overpaid benefits from the September 1, 2020 payment (the August benefit) to the time of collection by adjusting retirees benefit payments. SJCERA will not collect the amount of overpaid benefits from January 1, 2013 through August 31, 2020 from retirees, unless required by the Internal Revenue Service to maintain tax qualification. Instead, that amount will be collected through the unfunded actuarial liability payments.
- Benefits are calculated based on the highest final average compensation (FAC) period. If removing the excluded pay types causes a different period to be the highest, SJCERA will recalculate members' benefits based on the new highest FAC period.

### **Mandatory Alameda Exclusions**

The *Alameda* decision clarified that Boards of Retirement do not have authority to include in retirement allowance calculations items that are considered "in-kind" benefits under law. As it applies to SJCERA, this conclusion of the California Supreme Court means that employer contributions paid to deferred compensation on the member's behalf may not be included in retirement allowance calculations because they are not "compensation" as defined in Government Code Section 31460 (and clarified by the *Ventura* decision), and therefore cannot be included in retirement-eligible pay for anyone who retire(d) on or after July 30, 2020, when the Supreme Court issued *Alameda*. See the attached earnings codes list for details. Red font indicates a proposed change from current practice, and the legal basis for that change is cited in the Legend columns.

#### Excluded Pay types

Employer contributions to deferred compensation on behalf of members ("in kind" compensation)

#### Implementation

- Active and Deferred Members
  - If currently active or deferred members have paid contributions on excluded pay types at any time throughout their career, those contributions will be returned plus interest at the current assumed rate of return of 7 percent.
  - Employer-paid contributions to deferred compensation made on behalf of members will be excluded from final average compensation benefit calculations for anyone who retires on or after July 30, 2020, even if their FAC period is from a period of time before July 30, 2020, because *Alameda* confirmed that the governing law applicable to members when they retire is that which is to be applied to them.
- Retired Members
  - Affects those who retired on or after July 30, 2020 only.
  - If the affected retiree's benefit calculation included employer contributions to deferred compensation in the Final Average Compensation calculation, the benefit amount will be adjusted to remove the excluded pay type. The benefit will be adjusted as of the September 1, 2020 payment (the August benefit) forward. Any overpayment of benefit amounts will be recouped by adjusting members' retirement benefits.

- SJCERA calculates benefits based on the highest final average compensation (FAC) period. If removing the excluded pay type causes a different period to be the highest, SJCERA will recalculate the member's benefit based on the new highest FAC period.
- To determine the amount of the adjustment, SJCERA will calculate the total contributions the member has paid on employer contributions to deferred compensation throughout their career, and compare it to the total amount of overpaid benefits.
  - If the total overpaid contributions on the excluded pay type exceeds the total amount of overpaid benefits, SJCERA will pay the retiree the difference plus interest at the current assumed rate of return of 7 percent.
  - If the total overpaid benefits exceed the overpaid contributions on the excluded pay type, SJCERA will collect the amount of overpaid benefits from the September 1, 2020 payment (the August benefit) to the time of collection by adjusting retirees benefit payments.
  - Benefits are calculated based on the highest final average compensation (FAC) period. If removing the excluded pay types causes a different period to be the highest, SJCERA will recalculate members' benefits based on the new highest FAC period.

### **Discretionary Exclusions**

In addition to the above identified mandatory exclusions, the *Alameda* decision clarified the Board's discretionary authority to further refine its determinations of compensation earnable and pensionable compensation. An Ad Hoc Committee of the Board of Retirement will conduct an in-depth review of any earnings codes that staff and counsel determine merit further consideration by the Board. Upon completion of their review, the Committee will provide their recommendations to the full Board for action.



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Johanna Shick, CEO



**RESOLUTION TITLE:** *Alameda* Implementation as Applied to Compensation Earnable and Pensionable Compensation

**RESOLUTION NO.** 2020-10-03

WHEREAS, the San Joaquin County Employees' Retirement Association ("SJCERA") and the SJCERA Board of Retirement ("Board") are governed by the County Employees Retirement Law of 1937 (Gov. Code sections 31450, et seq. ("CERL") and the Public Employees' Pension Reform Act of 2013 (Gov. Code sections 7522, et seq.), enacted by Assembly Bill 340 (regular session 2011-2012), effective January 1, 2013 ("PEPRA").

WHEREAS, the Board is required by Government Code sections 31460, 31461 and 31542, to determine *compensation* and *compensation earnable* for SJCERA members ("Tier 1") who are not PEPRA Members and is required by Government Code sections 31460, 31542, and 7522.34, to determine *compensation* and *pensionable compensation* for those individuals who are PEPRA members.

WHEREAS, the Board has taken numerous prior actions to determine retirement eligible compensation for legacy and PEPRA members, but the scope of Assembly Bill 197 (2012-2013) ("AB 197"), as it amended section 31461, and Assembly Bill 340 (2012-2013) ("AB 340") as it enacted section 7522.34 ("Pensionable Compensation Definition") has been unclear in light of pending litigation against other CERL retirement systems who had implemented the PEPRA Exclusions ("AB 197 Litigation"). As such, the Board did not fully implement AB 197 or the Pensionable Compensation Definition while awaiting the outcome of the AB 197 Litigation.

WHEREAS, on July 30, 2020, the California Supreme Court filed its decision in the AB 197 Litigation, in a decision entitled *Alameda County Deputy Sheriff's Assoc. et al., v. Alameda County Employees' Retirement Assn., et al.* (2020) 9 Cal.5th 1032 (the "*Alameda Decision*"). The *Alameda Decision* concludes that all amendments to the definition of compensation earnable in Government Code section 31461, enacted as a result of the PEPRA and related statutory changes to CERL, effective January 1, 2013 are constitutional, and that CERL retirement boards may not be contractually bound or estopped by settlement agreements, board resolutions, or other similar actions, from implementing those amendments. The *Alameda Decision* further determines that CERL retirement boards may not include items in retirement allowance calculations, either compensation earnable under section 31461, as amended, or pensionable compensation under section 7522.34, that the applicable statutes require them to exclude. As used herein, the term "PEPRA Exclusions" shall refer 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," or by subdivision (c) of Government Code section 7522.34 to be included in "pensionable compensation," 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, the *Alameda Decision* also held that CERL retirement boards have no discretion to include pay items in retirement allowance calculations that are excluded under CERL, PEPRA, or other applicable statutes even without the enactment of PEPRA ("*Alameda Exclusions*"), disapproving of statements to the contrary in footnote no. 6 of *Guelfi v. Marin County Employees' Retirement Assn.* (1983) 145 Cal.App.3d 297 ("*Guelfi*

footnote 6"). As used herein, the term "*Alameda* Exclusions" shall refer to any benefits provided to members that a member may not receive directly in cash, which therefore are deemed "in-kind" benefits that are not "compensation" under Government Code section 31460. For SJCERA, such in-kind benefits are employer payments to deferred compensation plans on behalf of members.

WHEREAS, the Board hereby determines that the *Alameda* Decision and other applicable law require it to change its determinations of certain pay codes for either compensation earnable, pensionable compensation, or both, as resolved below.

WHEREAS, the *Alameda* Decision has resulted in certain excess member contributions (the "Overpaid Contributions") and benefit overpayments (the "Overpayments") attributable to PEPRA Exclusions and *Alameda* Exclusions, which the Board hereby determines should be corrected in accordance with Internal Revenue Code of 1986, as amended or replaced from time to time (the "Code"), Treasury regulations and other applicable Federal tax guidance, including Revenue Procedure 2019-19 (together, "Applicable Tax Law") and the Board's Correction of Errors or Omissions Policy last amended as of April 12, 2019 ("Correction Policy").

WHEREAS, this Resolution is intended to comply with the requirements of Applicable Tax Law and the Correction Policy as applicable.

NOW, THEREFORE BE IT RESOLVED, by the SJCERA Board of Retirement declares the following:

1. The foregoing Recitals are incorporated herein by this reference.
2. SJCERA shall comply with *Alameda's* directives regarding mandatorily excluded pay items, which includes the PEPRA Exclusions, and apply that directive to individuals who retire(d) from SJCERA on or after January 1, 2013 (including those who will retire on or after the date of this Resolution), effective with the first retiree payroll occurring after *Alameda*, that is, as of the SJCERA August retiree payroll, which was paid on September 1, 2020;
3. SJCERA shall comply with *Alameda's* directives regarding the Board's lack of authority to include the *Alameda* Exclusions in compensation, compensation earnable and pensionable compensation, as applicable, and apply that directive to all individuals who retire(d) from SJCERA on or after July 30, 2020, when the Supreme Court overturned *Guelfi* footnote 6 and SJCERA was thus on notice of that statement of law (including those who will retire on or after the date of this Resolution).
4. Overpayments shall be recouped in accordance with Applicable Tax Law and the Correction policy, provided that no recoupment shall be made directly from retirees for any Overpayments as a result of the PEPRA Exclusions having been included in the calculation of a retiree's retirement benefit prior to the issuance of the *Alameda* decision, except as may be required by the Internal Revenue Service to maintain federal tax qualification or a court of competent jurisdiction (any overpayments made on and after the September 1, 2020 payroll would be recouped).
5. SJCERA shall make a corrective distribution (including interest at SJCERA's current assumed rate of return of 7% ("Interest")) on the Overpaid Contributions reported on PEPRA Exclusions to retirees: (i) if such retirees were in active member service anytime on or after January 1, 2013; and (ii) the member's remaining contributions exceed any retirement benefit payments actually paid to the member on the basis of the uncorrected PEPRA Exclusions. In the event no contributions associated with the PEPRA Exclusions remain for a retiree (i.e., any Overpaid Contributions have already been distributed in the form of benefit payments), no corrective distribution of contributions shall be made.

6. SJCERA shall also make a corrective distribution (including Interest) to active and deferred members of Overpaid Contributions that they made on in-kind benefits that constitute *Alameda* Exclusions (i.e, all employer payments to deferred compensation plans on behalf of members), provided such members did not retire by July 30, 2020.

7. SJCERA shall also make a corrective distribution (including Interest) to active and deferred members for Overpaid Contributions reported and or associated with PEPRA Exclusions while in active service from January 1, 2013 through the date of implementation of the corrective distribution.

8. For clarification with respect to all corrective distributions provided for in this Resolution, to the extent a particular payment is permitted to be included in compensation earnable under section 31461 and so long as the timing of the payment did not result in prohibited Overpayments (e.g., "straddling" of years for leave cash outs, which is a "PEPRA Exclusion"), active member contributions attributable to such payments are not Overpaid Contributions. Accordingly, active member contributions will continue to be taken, and will not be refunded, on those leave cash outs because they properly contribute to the payment of the member's future SJCERA retirement allowance's inclusion of leave cash outs in an amount that does not exceed that which may be earned and payable in each 12-month period during the final average compensation period, regardless of when reported or paid.

9. All Overpayments (adjusted for earnings) shall be recouped from members and participating employers, including through payments on the unfunded actuarial liability, in accordance with Applicable Tax Law and recommendations from SJCERA's actuary.

10. Present impacted pay codes as soon as practicable to the Board to ratify exclusions from compensation earnable and pensionable compensation in compliance with *Alameda*, and communicate to SJCERA participating employers that member contributions are no longer to be taken on such pay codes.

11. Inform SJCERA members of the foregoing actions through appropriate means.

12. This resolution supersedes any previous resolutions for employer pay codes of employee compensation relating to compensation earnable and pensionable compensation to the extent they are inconsistent with the foregoing directives.

APPROVED by the Board of Retirement of the San Joaquin County Employees' Retirement Association on the 15<sup>th</sup> day of October 2020.

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
MICHAEL RESTUCCIA, Chair

Attest:

\_\_\_\_\_  
RAYMOND McCRAY, Secretary





**RESOLUTION TITLE:      COMPENSATION EARNABLE AND PENSIONABLE  
                                  COMPENSATION FOR SJCERA MEMBERS**

**RESOLUTION NO.          2020-10-04**

WHEREAS, Government Code Section 31461 defines and specifies Compensation that is excluded from Compensation Earnable and establishes the Board of Retirement as responsible for determining Compensation Earnable for members of the San Joaquin County Employees' Retirement Association; and

WHEREAS, Government Code 7522.34 defines and specifies the compensation that is excluded from Pensionable Compensation and establishes the Board of Retirement as responsible for determining Pensionable Compensation for employees subject to the Public Employees' Pension Reform Act (PEPRA) of 2013; and

WHEREAS, Compensation Earnable and Pensionable Compensation are used to determine the retirement contributions payable to SJCERA and the benefits payable by SJCERA to members and beneficiaries; and

WHEREAS, in July 1995, the Board established guidelines for determining Compensation Earnable as adopted in Resolution 95-07-01; and

WHEREAS, in December 2012, the Board established guidelines for determining Pensionable Compensation for new members in Tier 2 as adopted in Resolution 2012-12-04; and

WHEREAS, the Board from time to time has amended its determination of Compensation Earnable and Pensionable Compensation due to changes in the compensation schedules of employers participating in SJCERA or changes in applicable law; and

WHEREAS, the California Supreme Court's decision in *Alameda County Deputy Sheriff's Assoc. et al., v. Alameda County Employees' Retirement Assn., et al.* (2020) 9 Cal.5th 1031 (the "*Alameda* decision"), has established that certain pay types are not retirement eligible; and

WHEREAS, staff has evaluated SJCERA's current earnings codes in light of the *Alameda* decision and determined that certain codes should be modified forthwith, on the terms set forth separately in the Board's Resolution Regarding *Alameda* Implementation As Applied To Compensation Earnable and Pensionable Compensation.

NOW, THEREFORE, BE IT RESOLVED that, pursuant to the *Alameda* decision, the Board of Retirement hereby updates its determination of Compensation Earnable for members of SJCERA Tier 1 and Pensionable Compensation for members of SJCERA Tier 2 to include the revised earnings codes as contained in Attachment I, which is hereby incorporated into and made a part of this Resolution 2020-10-04; and

BE IT FURTHER RESOLVED that the determinations made herein shall remain in effect until such time as this Board, the Legislature or the Courts take action that

requires a different determination.

PASSED AND ADOPTED by the Board of Retirement of the San Joaquin County Employees' Retirement Association on the 15<sup>th</sup> day of October 2020.

AYES:

NOES:

MICHAEL RESTUCCIA, Chair

ABSENT:

Attest:

ABSTAIN:

RAYMOND McCRAY, Secretary

History:

- Revised by Resolution No. 95-07-01
- Revised by Resolution No. 96-06-03
- Revised by Resolution No. 97-06-03
- Revised by Resolution No. 98-03-01
- Revised by Resolution No. 98-04-01
- Revised by Resolution No. 98-10-01
- Revised by Resolution No. 2000-07-01
- Revised by Resolution No. 2000-10-01
- Revised by Resolution No. 2001-03-03
- Revised by Resolution No. 2002-02-01
- Revised by Resolution No. 2002-11-01
- Revised by Resolution No. 2004-07-01
- Revised by Resolution No. 2007-07-13
- Revised by Resolution No. 2010-06-03
- Revised by Resolution No. 2012-12-04
- Revised by Resolution No. 2015-09-01
- Revised by Resolution No. 2017-02-02
- Revised by Resolution No. 2017-08-01
- Revised by Resolution No. 2018-01-02
- Revised by Resolution No. 2019-01-01
- Revised by Resolution No. 2020-10-04

# Earnings Codes Changes as a Result of the *Alameda* Decision - Part 1

## LEGEND

**Alameda Decision**  
(Mandatory Exclusions for  
Tiers 1 & 2 -  
Inkind Benefits)

**PEPRA Mandatory**  
**Exclusion for Tier 1**

**PEPRA Mandatory**  
**Exclusion for Tier 2**

**PEPRA Discretionary**  
**Exclusion for Tiers**  
**1 and/or 2**

*Ventura* = *Ventura County Deputy Sheriffs' Assn. v. Board of Retirement* (1997) 16 Cal.4th 483

*Alameda* = *Alameda County Deputy Sheriff's Assoc. et al., v. Alameda County Employees' Retirement Assn., et al.* (2020) 9 Cal.5th 1032

(Y/N Changes Highlighted in RED Font)

Earnings Code	PeopleSoft Earnings Code Description	MOU Reference & Job Item Description (Description of when this code is used and to whom it applies)	<u>CONCLUSION</u> Comp Earnable Tier 1	<u>CONCLUSION</u> Pensionable Comp Tier 2				
A4S	Standby Pay 25 Per	Per MOU (Union K) Section 4.2.4 Standby Pay - an employee who is on standby status must be at a location where the employee can be reached at all times and upon being called shall return to work immediately. An employee who is recalled to work shall be deemed to be off standby status and the employee shall not receive standby pay for the hours the employee is paid to work, whether on straight time or overtime. Employees who perform standby pay duty shall be compensated at 25% of their regular hourly rate.	N	N		§31461 subd. (b)(3) [payment for additional services outside normal hours]; <i>Alameda</i> , p. 1062 (compensation earnable excludes payment for services provided outside normal hours)	PEPRA Exclusion for Tier 2 under §7522.34(c) subd. (6) [payment for additional services outside normal hours], (10) [bonus in addition to compensation in subd. (a)], (11) [inconsistent with requirements in subd. (a)], and (12) [Board determined should not be pensionable]	
A83	Standby Pay Hosp 33.33 Pr	Per MOU (Union M) Section 4.2.4 Standby Pay - an employee who performs standby duty shall receive 1/3 of hourly rate. An employee who is recalled to work shall be deemed to be off standby status.	N	N		§31461 subd. (b)(3) [payment for additional services outside normal hours]; <i>Alameda</i> , p. 1062 (compensation earnable excludes payment for services provided outside normal hours)	PEPRA Exclusion for Tier 2 under §7522.34(c) subd. (6) [payment for additional services outside of normal working hours], (10) [bonus in addition to compensation in subd. (a)], (11) [inconsistent with requirements in subd. (a)], and (12) [Board determined should not be pensionable]	
A84	Standby Pay Hosp 20 Pr	Per MOUs 4.2.4 Standby Pay - an employee who performs standby duty shall receive 20% of base pay. An employee who is recalled to work shall be deemed to be off standby status.	N	N		§31461 subd. (b)(3) [payment for additional services outside normal hours]; <i>Alameda</i> , p. 1062 (compensation earnable excludes payment for services provided outside normal hours)	PEPRA Exclusion for Tier 2 under §7522.34(c) subd. (6) [payment for additional services outside of normal working hours], (10) [bonus in addition to compensation in subd. (a)], (11) [inconsistent with requirements in subd. (a)], and (12) [Board determined should not be pensionable]	
A85	Standby Pay 20 Per	Per MOUs 4.2.4 Standby Pay - an employee who performs standby duty shall receive 20% of base pay. An employee who is recalled to work shall be deemed to be off standby status.	N	N		§31461 subd. (b)(3) [payment for additional services outside normal hours]; <i>Alameda</i> , p. 1062 (compensation earnable excludes payment for services provided outside normal hours)	PEPRA Exclusion for Tier 2 under §7522.34(c) subd. (6) [payment for additional services outside of normal working hours], (10) [bonus in addition to compensation in subd. (a)], (11) [inconsistent with requirements in subd. (a)], and (12) [Board determined should not be pensionable]	

# Earnings Codes Changes as a Result of the *Alameda* Decision - Part 1

## LEGEND

**Alameda Decision**  
(Mandatory Exclusions for Tiers 1 & 2 - Inkind Benefits)

**PEPRA Mandatory Exclusion for Tier 1**

**PEPRA Mandatory Exclusion for Tier 2**

**PEPRA Discretionary Exclusion for Tiers 1 and/or 2**

*Ventura* = *Ventura County Deputy Sheriffs' Assn. v. Board of Retirement* (1997) 16 Cal.4th 483

*Alameda* = *Alameda County Deputy Sheriff's Assoc. et al., v. Alameda County Employees' Retirement Assn., et al.* (2020) 9 Cal.5th 1032  
(Y/N Changes Highlighted in RED Font)

Earnings Code	PeopleSoft Earnings Code Description	MOU Reference & Job Item Description (Description of when this code is used and to whom it applies)	<u>CONCLUSION</u> Comp Earnable Tier 1	<u>CONCLUSION</u> Pensionable Comp Tier 2				
A86	Standby Pay 33.33 Per	Per MOUs 4.2.4 Standby Pay - an employee who performs standby duty shall receive 1/3 of hourly rate. An employee who is recalled to work shall be deemed to be off standby status.	N	N		§31461 subd. (b)(3) [payment for additional services outside normal hours]; <i>Alameda</i> , p. 1062 (compensation earnable excludes payment for services provided outside normal hours)	PEPRA Exclusion for Tier 2 under §7522.34(c) subd. (6) [payment for additional services outside of normal working hours], (10) [bonus in addition to compensation in subd. (a)], (11) [inconsistent with requirements in subd. (a)], and (12) [Board determined should not be pensionable]	
C10	County 10% Contribution to 457	Per MOUs -Employer contributions to member wages for participation in a deferred comp plan	N	N	§31460; <i>Ventura</i> , p. 491 (employer contributions to an employee's deferred comp plan are not within the definition of "compensation earnable"); <i>Alameda</i> , p. 1057 ("employee's contributions to a deferred compensation plan are included in compensation earnable in the year of the contribution, rather than the year in which the sums are withdrawn from the plan.")		PEPRA Exclusion for Tier 2 under §7522.34(c) subd. (9) [deferred comp.], (10) [bonus in addition to compensation in subd. (a)], (11) [inconsistent with requirements in subd. (a)], and (12) [Board determined should not be pensionable]	
C41	County 1% Contribution to 457	Per MOUs -Employer contributions to member wages for participation in a deferred comp plan	N	N	§31460; <i>Ventura</i> , p. 491 (employer contributions to an employee's deferred comp plan are not within the definition of "compensation earnable"); <i>Alameda</i> , p. 1070 ("The term "compensation," as used in section 31461 . . . expressly excludes the "monetary value" of benefits paid in kind. (§ 31460.) Nothing in those definitions hints either that they are intended merely to establish a minimum, rather than to serve as a comprehensive definition, or that they may be implemented at the discretion of local retirement boards. There is no indication, for example, that a local board has the discretion to include the monetary value of in-kind benefits, which are expressly excluded by section 31461..")		PEPRA Exclusion for Tier 2 under §7522.34(c) subd. (9) [employer payment to deferred comp.], (10) [bonus in addition to compensation in subd. (a)], (11) [inconsistent with requirements in subd. (a)], and (12) [Board determined should not be pensionable]	

# Earnings Codes Changes as a Result of the *Alameda* Decision - Part 1

## LEGEND

Alameda Decision (Mandatory Exclusions for Tiers 1 & 2 - Inkind Benefits)	PEPRA Mandatory Exclusion for Tier 1	PEPRA Mandatory Exclusion for Tier 2	PEPRA Discretionary Exclusion for Tiers 1 and/or 2
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*Ventura* = *Ventura County Deputy Sheriffs' Assn. v. Board of Retirement* (1997) 16 Cal.4th 483  
*Alameda* = *Alameda County Deputy Sheriff's Assoc. et al., v. Alameda County Employees' Retirement Assn., et al.* (2020) 9 Cal.5th 1032  
 (Y/N Changes Highlighted in RED Font)

Earnings Code	PeopleSoft Earnings Code Description	MOU Reference & Job Item Description (Description of when this code is used and to whom it applies)	<u>CONCLUSION</u> Comp Earnable Tier 1	<u>CONCLUSION</u> Pensionable Comp Tier 2				
C42	County 2% Contribution to 457	Per MOUs -Employer contributions to member wages for participation in a deferred comp plan	N	N	§31460; <i>Ventura</i> , p. 491 (employer contributions to an employee's deferred comp plan are not within the definition of "compensation earnable"); <i>Alameda</i> , p. 1070 ("The term "compensation," as used in section 31461 . . . expressly excludes the "monetary value" of benefits paid in kind. (§ 31460.) Nothing in those definitions hints either that they are intended merely to establish a minimum, rather than to serve as a comprehensive definition, or that they may be implemented at the discretion of local retirement boards. There is no indication, for example, that a local board has the discretion to include the monetary value of in-kind benefits, which are expressly excluded by section 31461..")		PEPRA Exclusion for Tier 2 under §7522.34(c) subd. (9) [employer payment to deferred comp.], (10) [bonus in addition to compensation in subd. (a)], (11) [inconsistent with requirements in subd. (a)], and (12) [Board determined should not be pensionable]	
C45	County 5% Contribution to 457	Per MOUs -Employer contributions to member wages for participation in a deferred comp plan	N	N	§31460; <i>Ventura</i> , p. 491 (employer contributions to an employee's deferred comp plan are not within the definition of "compensation earnable"); <i>Alameda</i> , p. 1070 ("The term "compensation," as used in section 31461 . . . expressly excludes the "monetary value" of benefits paid in kind. (§ 31460.) Nothing in those definitions hints either that they are intended merely to establish a minimum, rather than to serve as a comprehensive definition, or that they may be implemented at the discretion of local retirement boards. There is no indication, for example, that a local board has the discretion to include the monetary value of in-kind benefits, which are expressly excluded by section 31461..")		PEPRA Exclusion for Tier 2 under §7522.34(c) subd. (9) [employer payment to deferred comp.], (10) [bonus in addition to compensation in subd. (a)], (11) [inconsistent with requirements in subd. (a)], and (12) [Board determined should not be pensionable]	

# Earnings Codes Changes as a Result of the *Alameda* Decision - Part 1

## LEGEND

Alameda Decision (Mandatory Exclusions for Tiers 1 & 2 - Inkind Benefits)	PEPRA Mandatory Exclusion for Tier 1	PEPRA Mandatory Exclusion for Tier 2	PEPRA Discretionary Exclusion for Tiers 1 and/or 2
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*Ventura* = *Ventura County Deputy Sheriffs' Assn. v. Board of Retirement* (1997) 16 Cal.4th 483  
*Alameda* = *Alameda County Deputy Sheriff's Assoc. et al., v. Alameda County Employees' Retirement Assn., et al.* (2020) 9 Cal.5th 1032  
 (Y/N Changes Highlighted in RED Font)

Earnings Code	PeopleSoft Earnings Code Description	MOU Reference & Job Item Description (Description of when this code is used and to whom it applies)	CONCLUSION Comp Earnable Tier 1	CONCLUSION Pensionable Comp Tier 2				
DCA	Deferred Comp Adjustment	Code used to correct deferred comp errors - last used in 2003	N	N	§31460; <i>Ventura</i> , p. 491 (employer contributions to an employee's deferred comp plan are not within the definition of "compensation earnable"); <i>Alameda</i> , p. 1070 ("The term "compensation," as used in section 31461 . . . expressly excludes the "monetary value" of benefits paid in kind. (§ 31460.) Nothing in those definitions hints either that they are intended merely to establish a minimum, rather than to serve as a comprehensive definition, or that they may be implemented at the discretion of local retirement boards. There is no indication, for example, that a local board has the discretion to include the monetary value of in-kind benefits, which are expressly excluded by section 31461..")		PEPRA Exclusion for Tier 2 under §7522.34(c) subd. (9) [employer payment to deferred comp.], (10) [bonus in addition to compensation in subd. (a)], (11) [inconsistent with requirements in subd. (a)], and (12) [Board determined should not be pensionable]	
OC2	Correctional Briefing Holiday	Used by Sheriff to pay the briefing period prior to the start of their shift - they need a separate code for tracking. It is paid in addition to their shift and at 1.5x	N	N		PEPRA Exclusion for Tier 1 under §31461 subd. (b)(3) [payment for additional services outside normal hours]	PEPRA Exclusion for Tier 2 under §7522.34(c) subd. (6) [payment for additional services outside normal working hours], (10) [bonus in addition to compensation in subd. (a)], (11) [inconsistent with requirements in subd. (a)], and (12) [Board determined should not be pensionable]	
OCO	Correctional Briefing	Used by Sheriff to pay the briefing period prior to the start of their shift - they need a separate code for tracking. It is paid in addition to their shift and at 1.5x.	N	N		PEPRA Exclusion for Tier 1 under §31461 subd. (b)(3) [payment for additional services outside normal hours]	PEPRA Exclusion for Tier 2 under §7522.34(c) subd. (6) [payment for additional services outside normal working hours], (10) [bonus in addition to compensation in subd. (a)], (11) [inconsistent with requirements in subd. (a)], and (12) [Board determined should not be pensionable]	

# Earnings Codes Changes as a Result of the *Alameda* Decision - Part 1

## LEGEND

**Alameda Decision**  
(Mandatory Exclusions for Tiers 1 & 2 - Inkind Benefits)

**PEPRA Mandatory Exclusion for Tier 1**

**PEPRA Mandatory Exclusion for Tier 2**

**PEPRA Discretionary Exclusion for Tiers 1 and/or 2**

*Ventura* = *Ventura County Deputy Sheriffs' Assn. v. Board of Retirement* (1997) 16 Cal.4th 483

*Alameda* = *Alameda County Deputy Sheriff's Assoc. et al., v. Alameda County Employees' Retirement Assn., et al.* (2020) 9 Cal.5th 1032  
(Y/N Changes Highlighted in RED Font)

Earnings Code	PeopleSoft Earnings Code Description	MOU Reference & Job Item Description (Description of when this code is used and to whom it applies)	<u>CONCLUSION</u> Comp Earnable Tier 1	<u>CONCLUSION</u> Pensionable Comp Tier 2				
R4S	Retro-Standby Pay 25 Per	Sheriff's Non-Management MOU Section 4.2.4 Standby Pay	N	N		PEPRA Exclusion for Tier 1 under §31461 subd. (b)(3) [payment for additional services outside normal hours]; <i>Alameda</i> , p. 1062 (compensation earnable excludes payment for services provided outside normal hours)	PEPRA Exclusion for Tier 2 under §7522.34(c) subd. (6) [payment for additional services outside of normal working hours], (10) [bonus in addition to compensation in subd. (a)], (11) [inconsistent with requirements in subd. (a)], and (12) [Board determined should not be pensionable]	
R83	Ret-Standby Pay Hosp 33.33 Pr	Retro pay for A83 - Per MOU (Union M) Section 4.2.4 Standby Pay - an employee who performs standby duty shall receive 1/3 of hourly rate. An employee who is recalled to work shall be deemed to be off standby status.	N	N		PEPRA Exclusion for Tier 1 under §31461 subd. (b)(3) [payment for additional services outside normal hours]; <i>Alameda</i> , p. 1062 (compensation earnable excludes payment for services provided outside normal hours)	PEPRA Exclusion for Tier 2 under §7522.34(c) subd. (6) [payment for additional services outside of normal working hours], (10) [bonus in addition to compensation in subd. (a)], (11) [inconsistent with requirements in subd. (a)], and (12) [Board determined should not be pensionable]	
R84	Ret-Standby Pay Hosp 20 P	Retro pay for A84 - Per MOUs 4.2.4 Standby Pay - an employee who performs standby duty shall receive 20% of base pay. An employee who is recalled to work shall be deemed to be off standby status.	N	N		PEPRA Exclusion for Tier 1 under §31461 subd. (b)(3) [payment for additional services outside normal hours]; <i>Alameda</i> , p. 1062 (compensation earnable excludes payment for services provided outside normal hours)	PEPRA Exclusion for Tier 2 under §7522.34(c) subd. (6) [payment for additional services outside of normal working hours], (10) [bonus in addition to compensation in subd. (a)], (11) [inconsistent with requirements in subd. (a)], and (12) [Board determined should not be pensionable]	
R85	Ret-Standby Pay 20 Per	Retro pay for A85 - Per MOUs 4.2.4 Standby Pay - an employee who performs standby duty shall receive 20% of base pay. An employee who is recalled to work shall be deemed to be off standby status.	N	N		§31461 subd. (b)(3) [payment for additional services outside normal hours]; <i>Alameda</i> , p. 1062 (compensation earnable excludes payment for services provided outside normal hours)	PEPRA Exclusion for Tier 2 under §7522.34(c) subd.(6) [payment for additional services outside of normal working hours], (10) [bonus in addition to compensation in subd. (a)], (11) [inconsistent with requirements in subd. (a)], and (12) [Board determined should not be pensionable]	

# Earnings Codes Changes as a Result of the *Alameda* Decision - Part 1

## LEGEND

**Alameda Decision**  
(Mandatory Exclusions for Tiers 1 & 2 - Inkind Benefits)

**PEPRA Mandatory Exclusion for Tier 1**

**PEPRA Mandatory Exclusion for Tier 2**

**PEPRA Discretionary Exclusion for Tiers 1 and/or 2**

*Ventura* = *Ventura County Deputy Sheriffs' Assn. v. Board of Retirement* (1997) 16 Cal.4th 483

*Alameda* = *Alameda County Deputy Sheriff's Assoc. et al., v. Alameda County Employees' Retirement Assn., et al.* (2020) 9 Cal.5th 1032  
(Y/N Changes Highlighted in RED Font)

Earnings Code	PeopleSoft Earnings Code Description	MOU Reference & Job Item Description (Description of when this code is used and to whom it applies)	<u>CONCLUSION</u> Comp Earnable Tier 1	<u>CONCLUSION</u> Pensionable Comp Tier 2				
R86	Ret-Stby Pay 33.33 Per	Retro pay for A86 - Per MOUs 4.2.4 Standby Pay - an employee who performs standby duty shall receive 1/3 of hourly rate. An employee who is recalled to work shall be deemed to be off standby status.	N	N		PEPRA Exclusion for Tier 1 under §31461 subd. (b)(3) [payment for additional services outside normal hours]; <i>Alameda</i> , p. 1062 (compensation earnable excludes payment for services provided outside normal hours)	PEPRA Exclusion for Tier 2 under §7522.34(c) subd. (6) [payment for additional services outside of normal working hours], (10) [bonus in addition to compensation in subd. (a)], (11) [inconsistent with requirements in subd. (a)], and (12) [Board determined should not be pensionable]	
T07	Ret-Cafe Deferred Comp	Retro pay for deferred comp	N	N	§31460; <i>Ventura</i> , p. 491 (employer contributions to an employee's deferred comp plan are not within the definition of "compensation earnable"); <i>Alameda</i> , p. 1057 ("employee's contributions to a deferred compensation plan are included in compensation earnable in the year of the contribution, rather than the year in which the sums are withdrawn from the plan.")		PEPRA Exclusion for Tier 2 under §7522.34(c) subd. (9) [deferred comp.], (10) [bonus in addition to compensation in subd. (a)], (11) [inconsistent with requirements in subd. (a)], and (12) [Board determined should not be pensionable]	

This document presents a subset of earnings codes that are pertinent to this discussion. A complete list of earnings codes is available upon request.