

**BOARD OF RETIREMENT
MERCED COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
RESOLUTION NO. 2020-1**

**IMPLEMENTATION OF CALIFORNIA SUPREME COURT'S
ALAMEDA DECISION**

WHEREAS, on February 8, 2018, this Board of Retirement (“Board”) of Merced County Employees’ Retirement Association (“MercedCERA”) adopted Resolution No. 2018-1, implementing the First District Court of Appeal’s decision *Alameda County Deputy Sheriff’s Assn. v. Alameda County Employees’ Retirement Assn.* (2018) 19 Cal.App.5th 61, 82–83 (*Alameda Sheriffs*) as it applied to Vacation Payoffs (“Resolution No. 2018-1”), as described therein;

WHEREAS, on March 22, 2018, the Board adopted Resolution No. 2018-03, clarifying one aspect of its implementation of *Alameda Sheriffs* in Resolution No. 2018-1;

WHEREAS, on July 30, 2020, the California Supreme Court filed its decision *Alameda County Deputy Sheriff’s Assoc. et al., v. Alameda County Employees’ Retirement Assn., et al.* (2020) __ P.3d. __ (WL 4360051) (S247095) (“*Alameda*” or the “*Alameda Decision*”), and as provided in California Supreme Court Rule 8.532, it is expected to be final on August 30, 2020. Resolution No. 2018-01 and Resolution No. 2018-03 are referred to hereinafter collectively as the “*Alameda Sheriffs*-based Resolutions.”

WHEREAS, the *Alameda Decision* overturns certain legal and equitable determinations of the First DCA in *Alameda Sheriffs* and concludes that all amendments to the definition of Compensation Earnable in Government Code section 31461, enacted as a result of the Public Employees’ Pension Reform Act of 2013 and related statutory changes to the County Employees Retirement Law of 1937 (“CERL”) (collectively, “PEPRA”), 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 compensation earnable on and after January 1, 2013 that section 31461, as amended, requires them to exclude. Accordingly, the *Alameda Sheriffs*-based Resolutions do not comport with the law as now stated by the California Supreme Court in the *Alameda Decision*.

WHEREAS, as recited in Resolution No. 2018-1, this Board acted to implement PEPRA’s exclusion from compensation earnable as of January 1, 2013, but MCERA was prevented by Stay Orders issued by Merced County Superior Court and then Contra Costa County Superior Court from implementing PEPRA’s new exclusions from compensation earnable from January 1, 2013 through July 12, 2014 (“Stay Order Period”).

RESOLUTION NO. 2020-1

WHEREAS, as the result of the *Alameda Sheriffs*-based Resolutions, MercedCERA took actions as stated therein with respect to the up to 160 hour Vacation Payoff and related contributions (“Termination Pay”).

WHEREAS, MercedCERA continued to exclude all on-call, standby, and similar payments “outside of normal working hours” contemplated in CERL section 31461, subd. (b)(3) (collectively “On Call pay items”), though it did not correct the retirement allowances of members who retired between January 1, 2013 and July 12, 2014 to exclude On Call pay items from compensation earnable and for a period of time continued to collect contributions from active members on certain On Call pay items until in or about October 2017.

WHEREAS, the Board hereby determines that the *Alameda* Decision and other applicable law require it to make corrections to the benefits it pays and contributions it collects, as resolved below.

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.

NOW THEREFORE, BE IT RESOLVED, that effective as of August 13, 2020, the following actions are authorized by the Board and required of MercedCERA:

★ 1) Comply with *Alameda*’s directives regarding mandatorily excluded Termination Pay and apply that directive to all retiree payroll for individuals who are legacy members who retired on or after January 1, 2013 (including those who will retire on or after the date of this Resolution), effective with the August 2020 retiree payroll.

★★ 2) Comply with *Alameda*’s directives regarding mandatorily excluded On Call pay items and apply that directive to all retiree payroll for individuals who are legacy members who retired on or after January 1, 2013 (including those who will retire on or after the date of this Resolution), effective with the August 2020 retiree payroll.

3) Determine all active member contributions that were erroneously taken on On Call pay items and Termination Pay items on and after January 1, 2013 (i.e., PEPRAs Exclusions), and offset those overpaid contributions against any amounts overpaid to retirees as a result of the inclusion in retirement allowances of the PEPRAs Exclusions. Refund the net of all overpaid active member contributions on the PEPRAs Exclusions made from January 1, 2013, in a manner that complies with applicable federal tax compliance rules and California law. Provide a Notice of Correction Action to each impacted MercedCERA active, deferred and retired member providing the details of such corrective action and providing an opportunity to appeal through MercedCERA’s normal administrative appeal process.

4) Communicate to MercedCERA participating employers that member contributions are no longer to be taken on pay codes that are excluded as a result of the *Alameda* Decision, effective August 30, 2020 (pay period 17).

RESOLUTION NO. 2020-1

5) Inform the MercedCERA membership of these decisions through appropriate means.

This Resolution supersedes and rescinds the *Alameda Sheriffs*-based Resolutions and any other previous resolutions for employer pay codes of compensation earnable that are inconsistent with it.

ADOPTED: August 13, 2020

Aye: Goins, Ingersoll, Rhodes, Adams, Cabral, Silveira, Ness, Paskin, Peterson

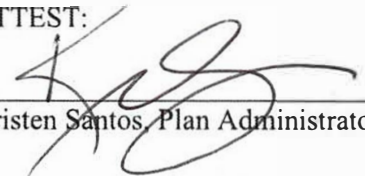
Nay: None.

Abstain: None.

Absent: None.



Ryan Paskin, Chair
Board of Retirement, Merced County
Employees' Retirement Association

ATTEST:


Kristen Santos, Plan Administrator