

CITY OF OAKLAND
AGENDA REPORT

2009 SEP -3 AM 9: 10

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Department of Human Resources Management
DATE: September 15, 2009

RE: **Adopt a Resolution Rescinding Resolution No.74213 C.M.S. Which Authorized the City of Oakland to Pay 100 Percent of Employees' Compensation Earnable as Employer Paid Member Contributions and Authorizing Continued Implementation of the Provisions of Section 414(h)(2) of the Internal Revenue Code to Tax Defer Member Paid Contributions to the California Public Employees' Retirement System (PERS) for Local Miscellaneous Employees Who Are Members of PERS**

SUMMARY

A resolution has been prepared to rescind Resolution No. 74213 C.M.S. which authorized the City to report to the Public Employees' Retirement System (PERS) as compensation the value of Employer Paid Member Contributions (EPMC) for local miscellaneous employees who are members of PERS and authorize payment of member contributions in accordance with newly ratified Memoranda of Understanding.

Recently ratified Memoranda of Understanding between the City and bargaining units representing the local miscellaneous employee group (SEIU Local 1021, IFPTE Local 21, IBEW Local 1245, and Deputy City Attorney V and Special Counsel Association) require that the member employee pay the full member contribution effective July 1, 2009. Section 414(h)(2) of the Internal Revenue Code allows the public agencies who are members of the California Public Employees' Retirement System (PERS) to designate employee retirement contributions, as required by bargaining unit Memoranda of Understanding, as being "picked-up" by the employer and treated as employer contributions for tax purposes. The effect of a pick-up is to defer tax on employee contribution amounts until the member retires and receives retirement benefits, or separates from employment and takes a refund of contributions. Absent implementing the 414(h)(2) provision applicable to governmental plans, employee contributions to PERS would automatically be after-tax contributions (e.g., taxable income to the employee at the time the contribution was made).

FISCAL IMPACT

The proposed resolution creates no fiscal impact or cost to the City of Oakland.

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BACKGROUND

Effective July 1, 2004, Memoranda of Understanding between the City of Oakland and bargaining units representing the local miscellaneous employees (SEIU Local 1021, IFPTE Local 21, IBEW Local 1245, Deputy City Attorney V and Special Counsel Association) were approved requiring the City to pay five percent (5%) of the eight percent (8%) member contribution for each represented employee and employees in these bargaining units to pay three percent (3%) of their income deducted as "Retirement Offset" with the three percent treated as pre-tax income.

The Memoranda of Understanding approved on July 21 and July 28, 2009 representing the various local miscellaneous groups require employees to pay the entire employee contribution of eight percent (8%). These employees have a "Retirement Offset" for the full eight percent (8%) employee contribution to PERS. There is already a resolution on file with PERS that authorizes the Miscellaneous groups' pre-tax deduction under IRC Section 414 (h)(2), so no additional action is required.

KEY ISSUES AND IMPACTS

Revenue Ruling 2006-43 provides, in general, that an employee contribution will not be treated as "picked-up" under IRC 414(h)(2) unless:

1. The employer specifies that the contributions, although designated as employee contributions, are being paid by the employer, and
2. The employer does not permit participating employees to opt out of the pick-up or to receive the contributed amounts directly instead of having them paid by the employer to the plan.

The City of Oakland's resolution is on file with PERS and insures that employees in the local miscellaneous group will be allowed to continue pre-tax payroll deductions of their PERS employee contribution. This will exclude the employees' contribution from federal gross income and withholding requirements.

Additionally, it has been determined that the City's payroll system meets the requirements established by PERS to participate in the pre-tax payroll deduction for employee contributions. Eligible employees (Miscellaneous group) will benefit from making PERS retirement employee contributions on a pre-tax basis.

SUSTAINABLE OPPORTUNITIES

There are no economic, environmental, or social equity opportunities resulting from this action.

DISABILITY AND SENIOR CITIZEN ACCESS

The proposed action does not impact disability and senior citizen access.

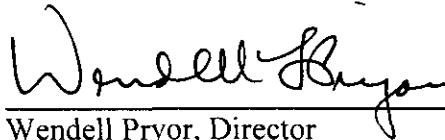
RECOMMENDATION(S) AND RATIONALE

The adoption of this resolution will rescind Resolution No. 74213 C.M.S. and authorize continued implementation of the provisions of Section 414(h)(2) of the Internal Revenue Code to tax defer member paid contributions to the California Public Employees' Retirement System (PERS) for local miscellaneous members who are members of PERS, allowing City employees in the Miscellaneous group to continue to have payroll deductions for PERS retirement employee contributions deducted on a pre-tax basis at no cost to the City.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that City Council approve the resolution rescinding Resolution No. 74213 C.M.S. and authorizing continued implementation of the provisions of Section 414(h)(2) of the Internal Revenue Code to tax defer member paid contributions to the California Public Employees' Retirement System (PERS) For local miscellaneous members who are members of PERS.

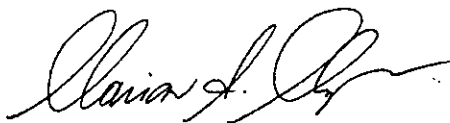
Respectfully submitted,



Wendell Pryor, Director
Department of Human Resources Management

Prepared by:
Yvonne S. Hudson, HR Manager
Retirement and Benefits

APPROVED AND FORWARDED TO THE FINANCE AND MANAGEMENT COMMITTEE:

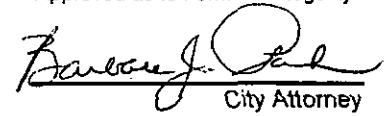


OFFICE OF THE CITY ADMINISTRATOR

Item: _____
Finance and Management Committee
September 15, 2009

FILED
OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL


City Attorney

2009 SEP -3 AM 9:10 RESOLUTION NO. _____ C.M.S.

Introduced by Councilmember _____

RESOLUTION RESCINDING RESOLUTION NO. 74213 C.M.S. WHICH AUTHORIZED THE CITY OF OAKLAND TO PAY 100 PERCENT OF EMPLOYEES' COMPENSATION EARNABLE AS EMPLOYER PAID MEMBER CONTRIBUTIONS AND AUTHORIZING CONTINUED IMPLEMENTATION OF THE PROVISIONS OF SECTION 414(h)(2) OF THE INTERNAL REVENUE CODE TO TAX DEFER MEMBER PAID CONTRIBUTIONS TO THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (PERS) FOR LOCAL MISCELLANEOUS EMPLOYEES WHO ARE MEMBERS OF PERS

WHEREAS, the City of Oakland has the authority to implement Government Code Section 20636 (c)(4) pursuant to Government code 20691; and

WHEREAS, the City of Oakland adopted Resolution No. 74213 C.M.S. on May 5, 1998 authorizing the City to pay 100% of all local miscellaneous employees' compensation earnable as Employer Paid Member Contributions and report the same percent (value) of compensation earnable (excluding Government Code Section 20636(c)(4) as additional compensation effective July 1, 1998; and

WHEREAS, the Memoranda of Understanding between the City of Oakland and bargaining units representing the local miscellaneous employees (SEIU Local 1021, IFPTE Local 21, IBEW Local 1245, Deputy City Attorney V and Special Counsel Association) were approved requiring the City to pay five percent (5%) of the eight percent (8%) member contribution for each represented employee and employees in these bargaining units to pay three percent (3%) of their income deducted as "Retirement Offset" with the three percent treated as pre-tax income; and

WHEREAS, Memoranda of Understanding approved on July 21 and July 28, 2009 representing the local miscellaneous groups require employees to pay the entire member contribution of eight percent (8%); and

WHEREAS, Resolution No. 81741 C.M.S. was approved by the City Council on January 6, 2009 and is on file with the Public Employees' Retirement System (PERS), authorizing the City of Oakland to implement the provisions of Internal Revenue Code Section 414(h)(2), making member contributions pursuant to California Government Code Section 20691 to the Public Employees' Retirement System on behalf of its employees who are members of the Public Employees' Retirement System; now, therefore be it

RESOLVED:

- I. That the City of Oakland shall rescind Resolution No. 74213 C.M.S. which authorized the City to pay 100% of all local miscellaneous employees' compensation earnable as Employer Paid Member Contributions effective June 30, 2009.

- II. That all local miscellaneous employees shall be required to pay the entire member contribution of eight percent (8%) effective July 1, 2009;
- III. That the City of Oakland will continue to implement the provisions of Internal Revenue Code Section 414(h)(2) by making employee contributions pursuant to California Government Code Section 20691 to the Public Employees' Retirement System on behalf of its employees who are members of the Public Employees' Retirement System. "Employee contributions" shall mean those contributions to the Public Employees' Retirement System which are deducted from the salary of employees and are credited to individual employee's accounts pursuant to California Government Code Section 20691 and treated as pre-tax income.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California