

FILED
OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND

AGENDA REPORT

2011 SEP -6 AM 11:25

TO: Office of the City Administrator
ATTN: Deanna Santana
FROM: Department of Human Resources Management
DATE: September 20, 2011

RE: Adopt a Resolution Rescinding Resolution No. 72693 C.M.S. Which Authorized the City of Oakland to Pay 100 Percent (100%) of Employees' Compensation Earnable as Employer Paid Member Contributions and Authorizing 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 Represented Local Police Safety Employees and Local Police Safety Management Employees, and Unrepresented Local Police Safety Management Employees Who Are Members of PERS

SUMMARY

A resolution has been prepared to rescind Resolution No. 72693 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 police safety 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 the Oakland Police Officers Association (OPOA) representing the local Police Safety employees and Police Safety management require the member employees to pay the full member contribution effective July 1, 2011. As provided in Ordinance No. 12187 C.M.S., the City Administrator approved concessions made by the unrepresented Chief of Police and Assistant Chief of Police to pay the full member contribution effective July 1, 2011.

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.

Item: _____
City Council
September 20, 2011

BACKGROUND

Effective June 30, 1996, the Memorandum of Understanding between the City of Oakland and the OPOA representing the local Police Safety employees was approved requiring the City to pay one hundred percent (100%) member contribution for each represented employee.

The Memoranda of Understanding approved by the City Council on July 26, 2011, representing local Police Safety employees and Police Safety management employees require employees to pay the entire employee contribution of nine percent (9%). The unrepresented Chief of Police and Assistant Chief of Police are also meeting a nine percent (9%) concession by paying the entire employee contribution.

These employees have a "Retirement Offset" for the full nine percent (9%) employee contribution to PERS. There is already a resolution on file with PERS (Resolution 81741 C.M.S.) that authorizes the local Police Safety 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 Police Safety group will be allowed to make 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 (local Police Safety 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.

Item: _____
City Council
September 20, 2011

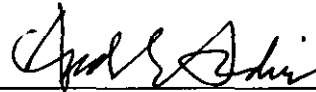
RECOMMENDATION(S) AND RATIONALE

The adoption of the resolution will rescind Resolution No. 72693 C.M.S. and authorize 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 police safety members, both represented and unrepresented, who are members of PERS, allowing City employees in the Police Safety group 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. 72693 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 represented local police safety and police safety management and unrepresented police safety management employees who are members of PERS.

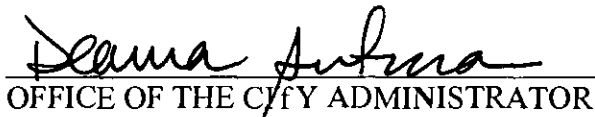
Respectfully submitted,



Andrea R. Gourdine, Director
Department of Human Resources Management

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

APPROVED AND FORWARDED TO THE CITY COUNCIL:


OFFICE OF THE CITY ADMINISTRATOR

Item: _____
City Council
September 20, 2011

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2011 SEP -6 AM 11:25

OAKLAND CITY COUNCIL

Approved as to Form and Legality

Tracy Chinn
City Attorney

RESOLUTION No. _____ C.M.S.

Introduced by Councilmember _____

RESOLUTION RESCINDING RESOLUTION NO. 72693 C.M.S. WHICH AUTHORIZED THE CITY OF OAKLAND TO PAY 100 PERCENT (100%) OF EMPLOYEES' COMPENSATION EARNABLE AS EMPLOYER PAID MEMBER CONTRIBUTIONS; AND AUTHORIZING 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 REPRESENTED LOCAL POLICE SAFETY EMPLOYEES AND LOCAL POLICE SAFETY MANAGEMENT EMPLOYEES, AND UNREPRESENTED LOCAL POLICE SAFETY MANAGEMENT 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. 72693 C.M.S. on June 4, 1996 authorizing the City to pay 100 percent (100%) of all local Police Safety 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 June 30, 1996; and

WHEREAS, the Memoranda of Understanding between the City of Oakland and the bargaining unit representing the local police safety employees and local police management employees (Oakland Police Officers' Association) were approved requiring the City to report to PERS the value of members' retirement contributions that are paid by the City on behalf of each member (Employer Paid Member Contributions); and

WHEREAS, the Memoranda of Understanding approved on July 26, 2011 representing the local police safety employees in Representation Unit PP1 and police safety management employees in Representation Unit UN2, require employees to pay the entire member contribution of nine percent (9%); and

WHEREAS, the City Administrator authorized concessions agreed to by the unrepresented Chief of Police and Assistant Chief of Police in Representation Unit UN1, to pay the entire nine percent (9%) member contribution; 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. 72693 C.M.S. which authorized the City to pay 100 percent (100%) of all local police safety employees' compensation earnable as Employer Paid Member contributions effective June 30, 2011.
- II. That all represented local police safety employees and police safety management employees shall be required to pay the entire member contribution of nine percent (9%) effective July 1, 2011;
- 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, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF, and PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California