

REPORT TO CITY COUNCIL

DATE: DECEMBER 10, 2008

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER

BY: NATHAN HAMBURGER, ASSISTANT CITY MANAGER
CELESTE BIRD, ADMINISTRATIVE ANALYST

SUBJECT: RESOLUTION NO. 08-1507; TO TAX DEFER EMPLOYER PAID MEMBER CONTRIBUTIONS TO THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM (PERS).

Internal Revenue Code (IRC) Section 414(h)(2) allows public agencies to designate required employee contributions 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 the 414(h)(2) provision applicable to governmental plans, employee contributions to a defined benefit pension plan qualified under Section 401(a) would automatically be after-tax contributions (e.g., taxable income to the employee at the time the contribution was made).

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

1. The employer specifies that the contributions, although designated as employee contributions, are being paid by the employer (this action must be memorialized in writing), 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.

Revenue Ruling 2006-43 allows employers who do not have written evidence of a pick-up, but their actions show that they intended to establish and carry out a pick-up, to be treated as meeting the requirements of IRC Section 414(h)(2) for past pre-tax contributions if the employer takes formal action in writing prior to December 31, 2008 with respect to future pick-up contributions.

Approval of Resolution 08-1507 will provide the necessary documentation to meet the federal tax reporting requirements outlined in Revenue Ruling 2006-43 and provides the City with the authority to implement the provisions of IRC Section 414(h)(2).

RECOMMENDATION

It is respectfully recommended the City Council adopt Resolution No. 08-1507; to tax defer employer paid member contributions to the Public Employees' Retirement System (PERS).

Attachment: Resolution No. 08-1507

RESOLUTION NO. 08-1507

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, TO TAX DEFER EMPLOYER PAID MEMBER CONTRIBUTIONS TO THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM

THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, HEREBY FINDS, RESOLVES AND ORDERS AS FOLLOWS:

SECTION 1. The City of Agoura Hills has the authority to implement the provisions of Section 414(h)(2) of the Internal Revenue Code (IRC); and

SECTION 2. The Board of Administration of the Public Employees' Retirement System adopted its Resolution regarding Section 414(h)(2) IRC on September 18, 1985; and

SECTION 3. The Internal Revenue Service has stated in December 1985, that the implementation of the provisions of Section 414(h)(2) IRC pursuant to the Resolution of the Board of Administration would satisfy the legal requirements of Section 414(h)(2) IRC; and

SECTION 4. The City of Agoura Hills has determined that even though the implementation of the provisions of Section 414(h)(2) IRC is not required by law, the tax benefit offered by Section 414(h)(2) IRC should be provided to its employees who are members of the Public Employees' Retirement System;

NOW, THEREFORE, BE IT RESOLVED:

- I. That the City of Agoura Hills will implement the provisions of Section 414(h)(2) IRC 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 credited to individual employee's accounts pursuant to California Government Code Section 20691.
- II. That the contributions made by the City of Agoura Hills to the Public Employees' Retirement System, although designated as employee contributions, are being paid by the City of Agoura Hills in lieu of contributions by the employees who are members of the Public Employees' Retirement System.
- III. That employees shall not have the option of choosing to receive the contributed amounts directly instead of having them paid by the City of Agoura Hills to the Public Employees' Retirement System.

- IV. That the City of Agoura Hills shall pay to the Public Employees' Retirement System the contributions designated as employee contributions from the same source of funds as used in paying salary.
- V. That the amount of the contributions designated as employee contributions and paid by the City of Agoura Hills to the Public Employees' Retirement System on behalf of the employee shall be the entire contribution required of the employee by the Public Employees' Retirement Law (California Government Code Sections 20000, et seq.).
- VI. That the contributions designated as employee contributions made by the City of Agoura Hills to the Public Employees' Retirement System shall be treated for all purposes, other than taxation, in the same way that member contributions are treated by the Public Employees' Retirement System.

PASSED, APPROVED, AND ADOPTED this 10th day of December, 2008 by the following vote to wit:

AYES: ()
NOES: ()
ABSTAIN: ()
ABSENT: ()

Denis Weber, Mayor

ATTEST:

Kimberly M. Rodrigues, City Clerk