

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Matthew J. Fertal

From: John D.R. Clark

Dept: City Manager

Dept: Human Resources

Subj: PRE-TAX TREATMENT OF
MEMBER-PAID CONTRIBUTIONS
TO CalPERS

Date: October 11, 2011

OBJECTIVE

To obtain City Council's approval of the attached resolution clarifying that the employee (member) contribution to CalPERS, which is deducted from employee salary but paid by the City, is done on a "pre-tax" basis.

BACKGROUND

Internal Revenue Code (IRC) Section 414(h)(2) allows public agencies and school employers 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.

DISCUSSION

The City Council adopted Resolution 8776-07 on June 26, 2007, which provided for both the purchase of prior military service and stated that employee contributions are being picked-up by the employer and treated as employer contributions for tax purposes. It has been assumed that this 2007 action along with many years of specific language being included in labor agreements were sufficient to meet the CalPERS requirement.

The City is now undergoing a routine periodic audit by CalPERS, which includes a review of tax-deferred member contributions documentation, among many other things. The City has been advised by CalPERS that while current documentation may be sufficient, their recommendation is to fully clarify the tax status of employee member contributions by adopting an appropriate resolution.

FISCAL IMPACT

None. Employees still make the full member contribution of CalPERS (8% for general employees and 9% for police and fire), but by deducting these contributions from employee pay on a pre-tax basis and making one aggregated payment to CalPERS, the employee does not incur tax liability until retirement or separation. There is no effect on City liability.

RECOMMENDATION

It is recommended that the City Council:

- Adopt the attached Resolution clarifying the tax-deferred status of employee contributions made by the City of Garden Grove.



JOHN D.R. CLARK
Human Resources Director/City Treasurer

Attachment: Proposed resolution

Recommended for Approval



Matthew Fertal
City Manager

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE
TO TAX DEFER MEMBER-PAID CONTRIBUTIONS
EMPLOYER CODE 0979

WHEREAS, the City of Garden Grove has the authority to implement the provisions of section 414(h)(2) of the Internal Revenue Code (IRC); and

WHEREAS, the Board of Administration of the California Public Employees' Retirement System (CalPERS) adopted its resolution regarding Section 414(h)(2) IRC on September 18, 1985; and

WHEREAS, 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); and

WHEREAS, the City of Garden Grove 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 CalPERS in the following CalPERS coverage groups:

70001 – Miscellaneous
74001 – Fire
75001 – Police

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Garden Grove:

- I. That the City of Garden Grove will implement the provisions of section 414 (h)(2) Internal Revenue Code by making employee contributions pursuant to the California State Government Code section 20691 to CalPERS on behalf of its employees who are members of CalPERS. "Employee contributions" shall mean those contributions to CalPERS which are deducted from the salary of employees and are credited to individual employee's accounts pursuant to California Government Code section 20691.
- II. That the contributions made by the City of Garden Grove to CalPERS, although designated as employee contributions, are being paid by the City of Garden Grove in lieu of contributions by the employees who are members of CalPERS.
- 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 Garden Grove to CalPERS.
- IV. That the City of Garden Grove shall pay to CalPERS 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 Garden Grove to CalPERS on behalf an 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 Garden Grove to CalPERS shall be treated for all purposes, other than taxation, in the same way that member contributions are treated by CalPERS.

City of Garden Grove
Employer 0979
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