



**TO:** Mayor and Councilmembers

**FROM:** Daniel Singer, City Manager

**CONTACT:** Michelle Greene, Administrative Services Director

**SUBJECT:** Confirmation of Employer "Pick-Up" of Employee Contributions to the Public Employees' Retirement System

**RECOMMENDATION:**

Adopt Resolution No. 08-\_\_ entitled "A Resolution of the City Council of the City of Goleta, California Confirming Employer 'Pick-Up' of Employee Contributions to the Public Employees' Retirement System".

**BACKGROUND:**

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

Since 2002, the City of Goleta has contracted with the California Public Employees' Retirement System (CalPERS) as the City's main retirement benefit program. CalPERS is currently undertaking an effort to ensure that contracting agency and school employers have adopted and submitted to CalPERS appropriate written evidence of "pick-ups" so that they may be in compliance with IRC Section 414(h)(2). Under this Revenue Code section, employee contributions will not be treated as "picked-up" 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 pickup or to receive the contributed amounts directly instead of having them paid by the employer to the plan.

**DISCUSSION:**

The City was recently informed by CalPERS that conforming documentation must be adopted in order for the City to be in compliance with IRC Section 414(h)(2). This documentation was inadvertently omitted from the City's original contract documents in 2002. Revenue Ruling 2006-43 allows employers who do not have written evidence of a pickup, but their actions show that they intended to establish and carry out a pick-up, to be treated as meeting the requirements of 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 picked-up contributions. If no formal action is taken prior to December 31, 2008, employee contributions will not be treated as "picked-up".

In order to ensure compliance with "pick-up" requirements under IRC section 414(h)(2), staff recommends that the City Council adopt a resolution confirming the City's past practice of "picking-up" employee contributions (Attachment 1). While adoption of the attached resolution is a ministerial action, it is critical to the continued integrity of the City's primary retirement benefit program.

**ALTERNATIVE:**

The City Council could elect not to adopt the proposed resolution, or could direct staff to bring it back for consideration at a later time. However, either of these actions would cause the City to be out of compliance with IRC section 414(h)(2). As a result, CalPERS will reject all tax-deferred member contributions that the City makes on its employees' behalf.

**FISCAL IMPACT:**

There are no fiscal impacts associated with the adoption of the proposed resolution. The resolution merely confirms the contribution practices that the City has conducted since 2002 when it first entered into a contract with CalPERS. Adoption of the proposed resolution will not change the amount of employer or employee contributions made to CalPERS under the City's current plan.

Submitted By:

Approved By:

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Michelle Greene  
Administrative Services Director

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Daniel Singer  
City Manager

**ATTACHMENT:**

1. Resolution No. 08-\_\_, entitled "A Resolution of the City Council of the City of Goleta, California Confirming Employer 'Pick-Up' of Employee Contributions to the Public Employees Retirement System".

## **ATTACHMENT 1**

**Resolution No. 08-\_\_, entitled “A Resolution of the City Council of the City of Goleta, California Confirming Employer ‘Pick-Up’ of Employee Contributions to the Public Employees Retirement System”.**

**RESOLUTION NO. 08- \_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF GOLETA, CALIFORNIA CONFIRMING  
EMPLOYER "PICK-UP" OF EMPLOYEE  
CONTRIBUTIONS TO THE PUBLIC  
EMPLOYEES' RETIREMENT SYSTEM**

**WHEREAS**, the City Council of the City of Goleta 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 Public Employees' Retirement System adopted its resolution regarding IRC section 414(h)(2) on September 18, 1985; and

**WHEREAS**, the Internal Revenue Service has stated in December 1985, that the implementation of the provisions of IRC section 414(h)(2) pursuant to the Resolution of the Board of Administration would satisfy the legal requirements of IRC section 414(h)(2); and

**WHEREAS**, the City Council of the City of Goleta has determined that even though the implementation of the provisions of IRC section 414(h)(2) is not required by law, the tax benefit offered by IRC section 414(h)(2) should be provided to its employees who are members of the Public Employees' Retirement System:

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLETA AS FOLLOWS:**

**SECTION 1.**

That the City of Goleta has implemented the provisions of IRC 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.

**SECTION 2.**

That the contributions made by the City of Goleta to the Public Employees' Retirement System, although designated as employee contributions, are being paid by the City of Goleta in lieu of contributions by the employees who are members of the Public Employees' Retirement System.

**SECTION 3.**

That employees shall not have the option of choosing to receive the contributed amounts directly instead of having them paid by the City of Goleta to the Public Employees' Retirement System.

**SECTION 4:**

That the City of Goleta 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.

**SECTION 5:**

That the amount of the contributions designated as employee contributions and paid by the City of Goleta to the Public Employees' Retirement System on behalf of an employee shall be the entire contribution required of the employee by the Public Employees' Retirement Law (California Government Code sections 20000, et seq.).

**SECTION 6:**

That the contributions designated as employee contributions made by City of Goleta 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 16<sup>th</sup> day of December, 2008.

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ROGER S. ACEVES, MAYOR

ATTEST:

APPROVED AS TO FORM:

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DEBORAH CONSTANTINO  
CITY CLERK

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TIM W. GILES  
CITY ATTORNEY

STATE OF CALIFORNIA )  
COUNTY OF SANTA BARBARA ) ss.  
CITY OF GOLETA )

I, DEBORAH CONSTANTINO, City Clerk of the City of Goleta, California, DO HEREBY CERTIFY that the foregoing Resolution No. 08-\_\_ was duly adopted by the City Council of the City of Goleta at a regular meeting held on the 16<sup>th</sup> December, 2008, by the following vote of the Council:

AYES: COUNCILMEMBERS

NOES: COUNCILMEMBERS

ABSENT: COUNCILMEMBERS

(SEAL)

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DEBORAH CONSTANTINO  
CITY CLERK