

RESOLUTION No. 2018-109

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MARINA, DESIGNATING EMPLOYEES' CONTRIBUTIONS TOWARD
EMPLOYER PENSION COSTS AS AN EMPLOYER PICK-UP PER
SECTION 414(h)(2) OF THE INTERNAL REVENUE CODE

WHEREAS, the City of Marina has the authority to implement Government Code section 20516 (f), which authorizes, under certain specified conditions, the City and its employees to share the costs of the employer contribution towards retirement benefits under the CalPERS retirement benefit plan ("CalPERS Plan"; and

WHEREAS, pursuant to section 20516(f) certain City employees will contribute an agreed percentage of their base salary ("contributions") towards the City's cost of the CalPERS retirement benefits provided for such employees; and

WHEREAS, section 20516(f) authorizes the City to implement cost-sharing arrangements without amending its existing pension contract with CalPERS; and,

WHEREAS, pursuant to the terms of the CalPERS Plan, the contributions shall continue to be designate as employer contributions; and

WHEREAS, section 3401(a)(12)(A) of the Internal Revenue Code ("Code") excludes employer contributions from an employee's wages until such time as such contributions are distributed to the employee; and

WHEREAS, as a result of the preceding, the Contributions will be taken on a pre-tax basis since the contributions are considered by the CalPERS Plan to be employer contributions; and

WHEREAS, if the Internal Revenue Service (IRS) takes a contrary position, concluding that the Contributions should be characterized as employee contributions rather than employer contributions, the City wishes to ensure that the Contributions are not treated as currently taxable to the employee; and

WHEREAS, notwithstanding its position that the contributions are deemed to be employer contributions by the CalPERS Plan and, therefore, excludable from a employee's income until distributed, the City wishes to implement the provisions of section 414(h)(2) of the Code; and,

WHEREAS, pursuant to section 414(h)(2), employee contributions to a public employer pension plan may be picked up on a pre-tax basis by the public employer and excluded from an employee's gross income if the employer specifies that the contributions, although designated as employee contributions to the plan are being paid by the employer in lieu of contributions by the employee, and the employee cannot choose to receive the amounts directly instead of having them paid by the employer; and

WHEREAS, the City has determined that, even though the implementation of the provisions of section 414(h)(2) is not required by law, the tax benefits of section 414(h)(2) in reducing the taxable employee gross income should be provided to its employees who are members of CalPERS; and

WHEREAS, Internal Revenue Service Revenue Ruling 2006-43 requires that the City take contemporaneous action evidencing an intent to establish a proper pick-up under section 414(h)(2).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MARINA DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Certain employees (“Employees”) of the City are contributing a percentage of their PERSable compensation as specified in applicable memoranda of understanding. These Contributions are allocated toward the City’s cost for retirement benefits provided to said employees under the CalPERS Plan.

SECTION 2. Unrepresented employees shall make an irrevocable and binding election not to receive said Contributions in cash in lieu thereof and to have the City pick-up and contribute such Contributions to the CalPERS Plan towards the City’s cost of the CalPERS retirement benefits provided for such Employees, and employees covered by a collective bargained agreement shall be required to contribute such Contributions as specified therein. “Contributions shall mean those contributions to the Public Employees’ Retirement System which are deducted from the salary of employees and are credited to the employer account pursuant to California Government Code section 20516(f).

SECTION 3. That the City will implement the provisions of Code section 414(h)(2) with respect to the Contributions.

SECTION 4. The Contributions, which may be designated as employee contributions by the Internal Revenue Service, will be picked up on a pre-tax basis by the City in lieu of employee contributions so that such Contributions are treated as employer contributions.

SECTION 5. An Employee may not elect to receive Contributions directly instead of having them paid by the City to the CalPERS Plan.

SECTION 6. Amounts picked up by the City shall be paid from the same sources of funds as used in paying salary.

SECTION 7. The effective date of the pick-up by the City shall be the later of the effective date of this Resolution or an employee’s execution of the irrevocable election, if applicable, and the pick-up applies only to contributions made after this effective date.

SECTION 8. The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the Office of the City Clerk.

PASSED and ADOPTED by the City Council of the City of Marina at a regular meeting duly held on this 5th day of September 2018 by the following vote:

AYES, COUNCIL MEMBERS: Amadeo, Morton, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: O’Connell, Brown

ABSTAIN, COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

August 27, 2018

Item No: **8f(2)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of September 5, 2018

**RECOMMENDATION TO CONSIDER ADOPTING A RESOLUTION NO.
2010-, TO DESIGNATE EMPLOYEES' CONTRIBUTIONS TOWARD
EMPLOYER PENSIONS COSTS AS AN EMPLOYER PICK-UP PER
SECTION 414(h)(2) OF THE INTERNAL REVENUE CODE**

REQUEST:

It is requested that the City Council:

1. Adopt a Resolution No. 2018-, to designate employee's contributions toward employer pension costs as an employer pick-up per section 414(h)(2) of the Internal Revenue Code.

BACKGROUND:

The recent approval of the Police MOU calls for employees to pay 2% of the City's CalPERS contribution as soon as administratively possible. To assure that these contributions are not taxed, the attached resolution is necessary, stating that the affected employees do not have access to these monies but are a mandatory contribution agreed to by an employee Memorandum of Understanding (MOU).

ANALYSIS:

The City has settled on a three-year MOU with the Marina Police Officer's Association. The City has two tiers of retirement for its police officers, classic (employees hired into the CalPERS system prior to January 1, 2013) and Public Employee Pension Reform Act (PEPRA) participants. The agreement calls for the classic CalPERS police officers to pay for 2% of the City's CalPERS contribution now and another 1% beginning.

It is proposed that these contributions be made on a tax-exempt basis. To assure that such contributions are tax-exempt, CalPERS asks cities to adopt a resolution that clearly states that such contributions are mandatory and not discretionary by the employee. As such, the City and employee are assured that such contributions are tax-exempt in a manner like that the employee CalPERS contribution is currently tax-exempt.

FISCAL IMPACT:

The 2% City pension pick-up by classic employees partially offsets the general 3.5% pay increase granted by the City for this fiscal year.

CONCLUSION:

This request is submitted for City Council consideration and possible action.

Respectfully submitted,

Eric Frost
Interim Finance Director
City of Marina

REVIEWED/CONCUR:

Layne Long
City Manager
City of Marina