

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS IMPLEMENTING INTERNAL REVENUE CODE SECTION 414(H)(2) WITH RESPECT TO EMPLOYEES WHO ARE MEMBERS OF THE MID-MANAGEMENT AND CONFIDENTIAL UNIT

WHEREAS, the City of Milpitas 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 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) IRC; and

WHEREAS, the City of Milpitas 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 the members of the Mid-Management and Confidential Unit, who are also members of the Public Employees' Retirement System:

NOW, THEREFORE, BE IT RESOLVED:

- I. That the City of Milpitas will implement the provisions of section 414(h)(2) Internal Revenue Code by making employee contributions pursuant to California Government Code section 20691 to the Public Employees' Retirement System on behalf of the members of the Mid-Management and Confidential Unit, who are also 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.
- II. That the contributions made by the City of Milpitas to the Public Employees' Retirement System, although designated as employee contributions, are being paid by the City of Milpitas in lieu of contributions by the members of the Mid-Management and Confidential Unit, who are also members of the Public Employees' Retirement System.
- III. That the members of the Mid-Management and Confidential Unit shall not have the option of choosing to receive the contributed amounts directly instead of having them paid by the City of Milpitas to the Public Employees' Retirement System.
- IV. That the City of Milpitas 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 Milpitas to the Public Retirement System on behalf of the members of the Mid-Management and Confidential Unit 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 City of Milpitas 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 AND ADOPTED this _____ day of _____ 2008, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Robert Livengood, Mayor

APPROVED AS TO FORM:

Michael Ogaz, City Attorney