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Resolution No. 1999-252

RESOLUTION OF THE CITY OF SAN BERNARDINO RESCINDING RESOLUTION NO. 1999-235 AND IMPLEMENTING THE PROVISIONS OF SECTION 414(H)(2) OF THE INTERNAL REVENUE CODE FOR ALL LOCAL FIRE AND POLICE MEMBERS.

WHEREAS, the City of San Bernardino has the authority to implement the provisions of Section 414(h)(2) of the Internal Revenue Code (IRC); and,

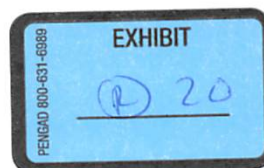
WHEREAS, the Board of Administration of the Public Employees' Retirement System adopted its resolution re: section 414(h)(2) IRC on September 18, 1985; and,

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 sections 414(h)(2) IRC; and,

WHEREAS, the City of San Bernardino 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:

WHEREAS, on September 22, 1999, the Mayor and Common Council of the City of San Bernardino adopted Resolution No. 1999-235, to implement the provisions of Section 414 (h)(2) of the Internal Revenue Code for all Local Fire and Police members.

WHEREAS, it is now necessary to correct said resolution to implement the provisions of Section 414(h)(2) of the Internal Revenue Code for all local fire and police members.



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RESOLUTION OF THE CITY OF SAN BERNARDINO RESCINDING RESOLUTION NO. 1999-235 AND IMPLEMENTING THE PROVISIONS OF SECTION 414 (H)(2) OF THE INTERNAL REVENUE CODE FOR ALL LOCAL FIRE AND POLICE MEMBERS.

BE IT RESOLVED BY THE MAYOR AND COMMON OF THE CITY OF SAN BERNARDINO AS FOLLOWS:

SECTION 1. Resolution No. 1999-235, adopted by the Mayor and Common Council of the City of San Bernardino on September 22, 1999, entitled:

**"RESOLUTION OF THE CITY OF SAN BERNARDINO IMPLEMENTING THE PROVISIONS OF SECTION 414(H)(2) OF THE INTERNAL REVENUE CODE FOR LOCAL FIRE AND POLICE MEMBERS"**

is hereby rescinded in its entirety.

SECTION 2. That the City of San Bernardino 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 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 all local fire and police employees and are credited to individual employee's accounts pursuant to California Government Code Section 20691.

SECTION 3. That the contributions made by the City of San Bernardino to the Public Employees' Retirement System, although designated as employee contributions, are being paid by the City of San Bernardino in lieu of contributions by the employees who are members of the Public Employees' Retirement System.

SECTION 4. That employees shall not have the option of choosing to receive the contributed amounts directly instead of having them paid by the City of San Bernardino to the Public Employees' Retirement System.

1999-252

1 RESOLUTION OF THE CITY OF SAN BERNARDINO RESCINDING  
2 RESOLUTION NO. 1999-235 AND IMPLEMENTING THE PROVISIONS OF SECTION  
3 414(H)(2) OF THE INTERNAL REVENUE CODE FOR ALL LOCAL FIRE AND POLICE  
MEMBERS.

4 SECTION 5. That the City of San Bernardino shall pay to the Public Employees'  
5 Retirement System the contributions designated as employee contributions from the  
6 same source of funds as used in paying salary.

7 SECTION 6. That the amount of the contributions designated as employee  
8 contributions and paid by the City of San Bernardino to the Public Employees'  
9 Retirement System on behalf of an employee shall be the entire contribution required of  
10 the employee by Public Employees' Retirement Law (California Government Code  
11 sections 20000, et. seq.).

12 SECTION 7: That the contributions designated as employee contributions made  
13 by the City of San Bernardino to the Public Employees' Retirement System shall be  
14 treated for all purposes, other than taxation, in the same way that member contributions  
15 are treated by the Public Employees' Retirement System.

16 I HEREBY CERTIFY that the foregoing Resolution was duly adopted by the  
17 Common Council of the City of San Bernardino at a joint regular meeting thereof,  
18 held on the 18th day of October, 1999, by the following vote,  
19 to wit:  
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RESOLUTION OF THE CITY OF SAN BERNARDINO RESCINDING  
RESOLUTION NO. 1999-235 AND IMPLEMENTING THE PROVISIONS OF SECTION  
414 (H)(2) OF THE INTERNAL REVENUE CODE FOR ALL LOCAL FIRE AND POLICE  
MEMBERS.

COUNCILMEMBERS:	AYES	NAYES	ABSTAIN	ABSENT
ESTRADA	<u>  x  </u>	<u>      </u>	<u>      </u>	<u>      </u>
LIEN	<u>  x  </u>	<u>      </u>	<u>      </u>	<u>      </u>
MCGINNIS	<u>  x  </u>	<u>      </u>	<u>      </u>	<u>      </u>
SCHNETZ	<u>  x  </u>	<u>      </u>	<u>      </u>	<u>      </u>
VACANT - 5th Ward	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
ANDERSON	<u>  x  </u>	<u>      </u>	<u>      </u>	<u>      </u>
MILLER	<u>  x  </u>	<u>      </u>	<u>      </u>	<u>      </u>

*Rachel G. Clark*  
Rachel G. Clark, City Clerk

The foregoing resolution is hereby approved this 19th of  
October, 1999.

*Jalles*  
Judith Valles, Mayor  
City of San Bernardino

Approved as to form and  
Legal content:

JAMES F. PENMAN,  
City Attorney

By: *James F Penman*



1999-252

EXCERPT FROM POLICE SAFETY MOU  
CONTRACT EFFECTIVE 1/1/99 TO 12/31  
ARTICLE III, SECTION 2

### Section 2 - PERS/Retirement Plan

A. The City will continue to participate in an employees' retirement plan for members by contract with the California Public Employees' Retirement System (PERS), under the current "2% at age 50" formula.

B. The City will continue to contract with PERS to provide the "highest 12 month" retirement formula.

C. The City will pay nine percent (9%) of the members' contribution to PERS through December 31, 1999. Effective January 1, 2000, Section E below will supercede this section.

D. The City will provide Post Survivors' Retirement benefit.

E. **PERS Salary Conversion:** The City will increase the base salary of all employees covered by this agreement by converting the nine percent (9%) Employer Paid Member Contribution (EPMC) to base salary. This base salary is "compensation earnable" as defined in Section 20636 ( c ) of the California Government Code and shall be reported to the Public Employees' Retirement System (hereinafter "PERS"). Employees will then assume responsibility for payment of the nine percent (9%) employee retirement contribution to PERS and all associated costs for the conversion of the EPMC to base salary. The City shall designate such payment as an Employer Pick-Up as defined under the provisions of Section 414(h)(2) of the Internal Revenue Code (26 USC & 414(h)(s)). The employee contribution to PERS shall be made through automatic payroll deductions from the base salary in accordance with PERS regulations.

For purposes of determining overtime compensation and other salary payments, including but not limited to, payoffs of sick leave, vacation accruals, holiday accruals and comp time balances, the aforementioned nine percent (9%) base salary increase shall not be considered.

F. The City shall provide written notification to representatives of the union prior to the end of each fiscal year, which identifies the applicable rate for the next fiscal year.

### Section 3 - Overtime

A. **Policy:** It is the policy of the City to discourage overtime, except when necessitated by abnormal or unanticipated workload situations. The City has the right to require overtime to be worked as necessary. Consistent with this policy, the Chief will make every effort to assign overtime evenly among the employees with similar skills or assignments.

Police Safety MOU

1999-252

EXCERPT FROM FIRE SAFETY MOU  
CONTRACT EFFECTIVE 1/1/99 TO 12/31  
ARTICLE III, SECTION 6

A. Policy: It is the policy of the City to discourage overtime except when necessitated by abnormal or unanticipated workload situations. The City has the right to require overtime to be worked as necessary. Consistent with this policy, the Fire Chief, Deputy Chief and Battalion Chiefs, will make every effort to assign overtime evenly among the employees with similar skills or assignments.

B. Definition: Overtime is defined as all hours worked in excess of the regularly scheduled workweek. All overtime shall be reported in increments of six (6) minutes and is non-accumulative and non-payable when incurred in units of less than six (6) minutes. Holiday leave, sick leave, vacation leave and court time shall be considered as time worked for purposes of computing overtime compensation.

C. Compensation: Payment for overtime shall be made on the first regular payday following the pay period in which overtime is worked, unless overtime compensation cannot be computed until some later date, in which case overtime will be paid on the next regular payday after such computation can be made.

#### Section 6 - Retirement Plan

A. The City shall continue to participate in an employees' retirement plan for Public Safety Officers, by contract with the California Public Employees' Retirement System (PERS) under the current "2% at age 50" formula.

B. The City shall continue to provide the "highest 12 month" retirement formula and Military Service Credit.

C. The City shall contract with PERS to provide the Fourth Level 1959 Survivor Benefit. All costs will be borne by the employee.

D. The City shall continue to provide the Post-Survivors' Retirement Benefit.

E. The City shall continue to provide the Post-Retirement Survivor Allowance to Continue After Remarriage benefit.

F. The City shall continue to pay through December 31, 1999, nine percent (9%) of the members' contribution to PERS credited to the employee's account as a fringe benefit, for current, active employees hired prior to July 1, 1997. Effective January 1, 2000, Section H of this article will replace this section.

G. For any employee hired on or after July 1, 1997, the City will pay five percent (5%) of the members' contribution to PERS credited to the employee's account as a fringe benefit. Upon said employees completing five (5) years of service the City will pay nine percent (9%) of the members' contribution to PERS credited to the employee's account as a fringe benefit on the first pay period of the sixth year of service. Effective January 1,

Fire Safety MOU

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2000, Section H of this article will replace this section.

H. The City will increase the base salary of all employees covered by this agreement by converting the nine percent (%) Employer-Paid Member Contribution (EPMC) to base salary. This base salary is "compensation earnable" as defined in Section 20636 ( c ) of the California Government Code and shall be reported to the Public Employees' Retirement System (hereinafter "PERS"). Employees will then assume responsibility for payment of the nine percent (9%) employee retirement contribution to PERS and all associated costs for the conversion of the EPMC to base salary. The City shall designate such payment as an Employer Pick-Up as defined under the provisions of Section 414(h)(2) of the Internal Revenue Code (26 USC & 414(h)(2)). The employee contribution to PERS shall be made through automatic payroll deductions from the base salary in accordance with PERS regulations.

For purposes of determining overtime compensation and other salary payments, including but not limited to, payoffs of sick leave, vacation accruals, holiday accruals and comp time balances, the aforementioned nine percent (9%) base salary increase shall not be considered.

I. The City shall provide written notification to representatives of the union prior to the end of each fiscal year, which identifies the applicable rate for the next fiscal year.

#### Section 7 - On-Call/Call-Back/Standby

Any employee on "on-call" status will receive a minimum of two- (2) hours' pay at time-and-a-half for all or any portion of a 24-hour day. If called back any time within the first two (2) hours of on-call, the time worked will be deducted from the two (2) hours on-call. If the call-back occurs after two (2) hours expire, call-back time will be clocked from the time the employee receives the call to report. Compensation for that time is in addition to the on-call status.

In the event an employee is placed on "standby" for court subpoena, the employee will receive two (2) hours standby pay at time-and-a-half. If the employee is called to court and does not go beyond 12:00 hours on that day, it will be considered part of the two (2) hours standby. If the employee has to appear after the noon recess, any additional time will be added to the two (2) hours standby, plus one-half hour travel time. In cases where the subpoena is for 13:30 hours, or another time, the standby will start with time stated on the subpoena. In those cases where the subpoena is for 13:30 or later, the employee's time will be computed at the amount of time between the time of subpoena and 17:00, plus 30 minutes travel time. In the event the employee is required to pay parking fees, the employee will be reimbursed. If the employee is required to stay through noon recess, he

*Fire Safety MOU*