



TOWN OF FAIRFAX

STAFF REPORT

August 6, 2014

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager
Michael Vivrette, Finance Director

SUBJECT: Approval of social security payments for part-time employees and the adoption of a resolution adopting a Part Time, Temporary, and Seasonal (PTS) 457 Deferred Compensation Plan for those PTS employees not covered under the Town's CalPERS retirement plan

RECOMMENDATION

- 1) Authorize the Town Manager to make payments to the IRS for both the employer and employee share of past due payments plus interest and penalties for social security and to negotiate with individual employees the repayment of his/her portion of the social security payment.
- 2) Adopt a resolution adopting a Part Time, Temporary, Seasonal (PTS) 457 Deferred Compensation Plan offered by ICMA as a qualified FICA replacement plan for part-time, temporary and seasonal employees not covered under the Town's CalPERS plan with the provisions of the employer contributing 3.75% and the employee 3.75%.
- 3) Appropriate \$45,000 from General Fund reserves (Fund 01) to Fund 01-715 (Non-departmental) to pay estimated employer tax, interest and penalty.

DISCUSSION

This report is broken into two sections: a) discussion related to recommendation #1 and b) discussion related to recommendation #2.

Social Security (FICA)

A few weeks ago, staff determined that the Town should have been making contributions to and deducting social security from part-time employees' paychecks. We had mistakenly believed that since the Town participated in the CalPERS retirement program and not social security, the Town and part-time employees did not need to make payments to social security. It should be noted that some part-time employees are covered by CalPERS because of the number of hours they work per year. However, for those employees who did not exceed the threshold, the Town is liable for a period going back 3 years, 3 months, and 15 days. There are 17 past and current employees affected by this situation. The Town is required to pay upfront to the IRS both the employees' and employer's share of social security when we file the required forms. Staff estimates the Town will pay approximately \$68,000 in social security payments of which 50% is the employees' share. The Town is also responsible for all penalties and interest which is estimated to be approximately \$11,000, which brings the total to approximately \$79,000.

While the Town must make the payments for the employees' share upfront, it cannot voluntarily pay the employees' share, as this would constitute an unlawful gift of public funds. It is analogous to a bank mistakenly depositing money into someone's account- the account holder does not get to keep the money when the mistake is discovered. However, the Town can make arrangements with each employee to pay back to the Town their respective shares. We will have to negotiate a written letter agreement with each employee so as not to cause them financial hardship. As a result, staff does

require the flexibility to tailor a repayment plan to meet each employee's financial situation. Unfortunately, if a past employee does not cooperate, we would need to pursue other options to collect repayment.

PTS Deferred Compensation Program

The Town is required to withhold Social Security on employees who are not covered by PERS or by a qualified alternative public retirement system (FICA replacement plan). As of July 2, 1991, most state and local government employees became subject to mandatory social security and Medicare coverage, unless they are (1) members of a public retirement system, or (2) covered under a Section 218 Agreement. The Town does not have an active 218 agreement.

ICMA, the Town's current provider of 457 deferred compensation plans, offers a "PTS 457 plan" designed for part-time, temporary, and seasonal employees which qualifies as a FICA replacement plan. This plan would be mandatory for all PTS employees not covered by CalPERS.

The PTS plan, adopted by Town resolution, requires a minimum contribution of 7.5%. We are recommending the Employee contribute 3.75% and the Town contribute 3.75% of wages as a mandatory contribution. Our research indicates most communities contribute 2.5% and the employee 5%, but we have found other communities that share 50% (3.75%) of the contribution. Given the impact the repayment and PTS 457 plan contribution will have on the employees' take home pay, this contribution formula would help to minimize the impact to the affected employees. Employees are also permitted to contribute additional amounts to the PTS program (up to 100% of gross compensation, or \$16,000).

Contributions are handled through payroll deduction on a pretax basis and are sent semimonthly to ICMA where they are held in trust. Earnings are tax deferred. Unlike the regular ICMA 457 account funds are put in a PLUS fund which is actively managed and returns are more stable. Accounts are subject to an account fee of \$18 per year. We are recommending the Town pay the fee for employees.

Employees are entitled to the funds when they leave employment. Withdrawals are taxable when distributed, though they are eligible for rollover to a traditional IRA account or other eligible employer retirement plans (such as a 401, 403(b) or 457).

There are advantages to both the Town and the employees of having a PTS plan.

- (1) The total cost of the Plan is less for the Town and for the employees. Social Security requires a 12.4% contribution, shared evenly between the employer and employee at 6.2% each.
- (2) To collect on Social Security, employees must earn 40 quarters or 10 years. Consequently, some employees may never collect on their contribution. PTS fund and earnings are the employee's own.
- (3) PTS plan contributions are pre-tax whereas Social Security contributions are not.
- (4) Employees may fund the plan with additional contributions – a feature which is not part of Social Security.
- (5) As a defined-contribution plan, the PTS plan does not have hidden liabilities which are inherent in defined-benefit plans such as PERS and Social Security.

- (6) The plan is low cost. There is no setup fee or annual administrative cost to the Town.
Employee accounts have an annual fixed fee of \$18 for accounts which will be covered by the Town.

FISCAL IMPACT

The initial cost is \$79,000. However, assuming the employees' repay their share of \$34,000 over time, the net cost to the Town is \$45,000. The payment of the employees' share is classified as loan and no adjustments to the Town's budget are needed. However, funds will need to be appropriated to pay for the employer's share of expenses. It is possible that the net costs could be absorbed by the FY14-15 budget due to anticipated salary and other cost savings. However, we would not be able to make that determination until the mid-year budget review.

The creation of a PTS deferred compensation program would cost the Town 2.5% of salary costs which is much less than paying the employer's share of social security (6.2%). Based on the FY14-15 budget for part-time employee salaries of \$215,000 (10 employees), the Town's share would be approximately \$8,300 including the fees for the PTS program. No budget adjustments are needed as these costs can be absorbed within the existing FY14-15 budget.

ATTACHMENTS

Resolution
ICMA flyer

RESOLUTION 14-__

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
ADOPTING A PART TIME, TEMPORARY, AND SEASONAL (PTS) 457
DEFERRED COMPENSATION PLAN FOR THOSE EMPLOYEES NOT
COVERED UNDER THE TOWN'S CALPERS RETIREMENT PLAN**

WHEREAS, the Town of Fairfax ("Town") has part-time, temporary, and seasonal (PTS) employees rendering valuable services to the Town; and

WHEREAS, the establishment of a PTS deferred compensation plan for such employees serves the interests of the Town by enabling it to provide reasonable retirement security for its employees, by providing increased flexibility in its personnel management system, and by assisting in the attraction and retention of competent personnel; and

WHEREAS, the ICMA, the Town's current provider of 457 deferred compensation plans, offers a "PTS 457 plan" designed for part-time, temporary, and seasonal employees which qualifies as a FICA replacement plan; and

WHEREAS, the total cost of the PTS 457 Plan is less for the Town and for the employees and employees are entitled to the funds when they leave employment;

NOW, THEREFORE, BE IT RESOLVED, by the Town Council of the Town of Fairfax that:

- 1) The Town Manager is hereby authorized to do everything necessary and appropriate to establish the PTS 457 Plan with ICMA including the execution of any agreements and documents; and
- 2) The PTS 457 Plan shall have a minimum contribution of 7.5% of gross salary of which the Employee shall contribute 3.75% and the Town 3.75% of wages; and
- 3) The Town shall pay the account fee for employees.

The foregoing Resolution was duly passed and adopted at a regular meeting of the Town Council of the Town of Fairfax held in said Town on the 6th day of August 2014 by the following vote, to wit:

AYES:

NOES:

ABSENT:

Attest:

DAVID WEINSOFF, Mayor

Michele Gardner, Town Clerk



457 Deferred Compensation Plan Part-Time, Temporary, and Seasonal (PTS) Plan Supplement

This is a supplement to the *457 Governmental Deferred Compensation Plan & Trust* document that summarizes the 457 Part-Time, Temporary, and Seasonal (PTS) Plan and the unique provisions related to the operation and administration of the 457 PTS Plan.

Eligibility

The 457 PTS Plan is offered specifically for employees who are part-time, temporary, or seasonal. The primary purpose of this Plan is to provide retirement benefits comparable to the benefits these employees would receive under Social Security.

Part-time, temporary, and seasonal are generally defined as follows:

- A part-time employee is any employee who normally works 20 hours or fewer per week.
- A temporary employee is any employee performing services under a contractual arrangement of two years or fewer in duration.
- A seasonal employee is an employee who normally works on a full-time basis for fewer than five months in a year.

Please refer to the Employer's personnel manuals or other materials in an effort to determine the specific definitions of "part-time, temporary, and seasonal."

Contributions

A minimum contribution of 7.5 percent of an employee's gross salary is required under the 457 PTS Plan. These contributions may be made to the Plan by the Participant, the Employer, or a combination of both. The actual combination will be determined by the Employer. The Participant may elect to increase (up to the appropriate limits) his or her contributions above the minimum required 7.5 percent at any time.

The Participant's minimum retirement benefit under the 457 PTS Plan is 100 percent nonforfeitable upon enrollment.

Distributions

Mandatory Distributions – A Participant's account balance will be distributed automatically 1) if his or her balance is less than \$1,000 upon separation from service or 2) if his or her balance is less than \$1,000, there was no prior small balance distribution in the account, and no contributions were made to the account during a two-year period ending on the date of the distribution. Amounts of \$1,000 or more will remain in the account until voluntarily withdrawn by the Participant.

Please review the *Special Tax Notice Regarding Plan Payments* for information regarding taxation and withholding requirements.

(over)

AC: 1111-5276